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ABSTRACT

In order to assess their effect on job inequality in private employment, a study was made of Title VII of the Civil Rights Act of 1964, Executive Order 11246, and federally aided employment service and job preparation programs with equal employment opportunity as an objective. Altogether, 250 interviews were conducted with federal officials responsible for administering the programs and with directors in selected metropolitan areas. In addition, questionnaires concerning experience in equal employment opportunity programs were mailed to 102 selected State and local civil rights leaders and 35 were returned. Some major conclusions and recommendations include: (1) While the Equal Employment Opportunity Commission is beginning to control some of its problems, the commission needs to increase its effectiveness by moving away from individual cases to broader self-starting activities, (2) More determined application of sanctions under Executive Order 11246 is imperative if the program is to be effective and respected, and (3) Closer linkages should be established between the equal job enforcement and manpower programs. (SB)

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Chapter 1

INTRODUCTION

This report examines the implementation of policies of the Federal Government to provide equal opportunity in private employment for members of minority groups.[1] In order to focus on the totality of the government's attack on job inequality in the private sector, three major equal employment opportunity policies of the Federal Government have been included within the scope of this study. They are:

(1) Title VII of the Civil Rights Act of 1964 prohibiting discrimination in employment;[2]

(2) Executive Order 11246 to ban discrimination and promote equal opportunity on the part of employers who have contracts with the Federal Government;[3] and

(3) Federally aided employment service and job preparation programs, insofar as equal employment opportunity is included among their basic objectives.

Following are brief descriptions by way of introduction of each of the three major equal job policies included in the study.

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 prohibits discrimination in all phases of private employment on the basis of race, color, religion, sex, or national origin. It established the five-member Equal Employment Opportunity Commission (EEOC) to secure compliance with these requirements on the part of employers, employment agencies, unions, and community organizations. The Commission was given limited authority. It main recourse in handling complaints is "informal methods of conference, conciliation, and persuasion." [Section 706(a)]

Chapter 2 of this report describes the way in which the Equal Employment Opportunity Commission has interpreted Title VII and organized its complaint handling and technical assistance activities in Washington and in the field. It also discusses the treatment and viewpoint of the complainant, the respondent, and major clientele groups affected by Title VII and the activities of the EEOC.

Although the Equal Employment Opportunity Commission does not have enforcement powers, the Attorney General is empowered to bring suit and intervene in private suits under Title VII of the Civil Rights Act of 1964. Chapter 3 of this report describes the role of the Justice Department in the implementation of Title VII and its relationship to the Equal Employment Opportunity Commission.

Executive Order 11246

Executive Order 11246, issued by President Johnson September 24, 1965, is the sixth in a series of equal employment orders under Federal contracts dating back to 1941. Employers with Federal contracts employed an estimated 24 million persons, approximately one-third of the labor force, in 1966. Besides banning discrimination, Executive Order 11246 requires that Federal contractors take "*affirmative action* to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, or national origin." [Section 202(1), italics added]

The enforcement machinery of Executive Order 11246 involves separately administered compliance programs within all Federal agencies employing contracts in their operations. These programs are coordinated and supervised by the Secretary of Labor, who in 1965 established the Office of Federal Contract Compliance in the Labor Department to carry out this responsibility.

Chapter 4 of this report traces the process of policy implementation under Executive Order 11246 on much the same basis as in Chapter 2 for the Equal Employment Opportunity Commission. It successively describes the role of the Office of Federal Contract Compliance, the compliance programs of major contracting agencies,[4] and the work of individual contract compliance specialists in the field. The chapter concludes with a discussion of the contract compliance activities of the Federal Government from the point of view of covered employers and civil rights leaders at the community level.

Manpower Training and Employment Services

Federal Government manpower programs have an important role in combating minority group inequality. Chapter 5 deals with two equal opportunity aspects of selected manpower programs:

(1) enforcement of the prohibition contained in the Civil Rights Act of 1964 (Title VI) and in various departmental rules and regulations against discrimination in federally aided employment service and

job preparation programs as well as in apprenticeship training programs registered by or through the Labor Department's Bureau of Apprenticeship and Training; and

(2) special assistance under these programs to overcome the job-related disadvantages of members of minority groups.

Major attention is given in this chapter to those programs which because of their size (as in the case of the employment service system, the Neighborhood Youth Corps, and the Manpower Development and Training Act, MDTA) or because of the controversy about them (as in the case of apprenticeship) were found to be of greatest importance in the research for this study.

SCOPE AND METHODOLOGY

The focus of this study is on the process of implementation for the covered equal employment opportunity policies. In effect, the study examines the way in which the Federal Government's "good" intentions in the field of equal employment are--or are not--converted into good results. This approach was selected because of its relevance to the Federal Government's involvement in the field of civil rights. Civil rights laws and policies now apply in almost every area in which government--Federal, State, and local--has responsibilities. It is not so much new laws that are required today to achieve civil rights goals as a strengthened capacity to make existing laws work. It is this capacity to make existing laws work that is of principal interest for this study.

The decision to focus on the process of policy implementation resulted in a layering of this research into stages corresponding to the administrative levels through which policy is transmitted. The first stage of the research consisted of interviews in Washington with Federal officials responsible for administering the programs and activities covered in this report. These interviews, in turn, were used as the basis for field research in selected metropolitan areas: Atlanta and Macon, Georgia; Chicago, Illinois; Houston, Texas; Memphis, Tennessee; San Francisco, California; and Trenton (and Northern) New Jersey. For each of these cities, researchers interviewed: (1) regional and sub-regional Federal officials; (2) State and local officials; (3) major area employers; and (4) representatives of affected private organizations. Also included in the field research was participation in two equal employment opportunity reviews by the Department of Defense. Altogether, 250 interviews were conducted in Washington and the field. In addition, a questionnaire was mailed to selected State and local civil rights leaders soliciting information on their experience under the equal employment opportunity programs and activities of the Federal Government. Out of 102 questionnaires mailed, 35 replies were received.

A word is in order here about timing. The research for this study was done in 1967 and 1968. Every effort has been made to report decisions and program changes known to have occurred through the fall of 1968. Some developments which should be covered may not be, and some of the programs described here may have undergone further change. But the broad conclusions which emerge in this report and the basic recommendations put forward are believed to have continuing validity.

THE BASIC PROBLEM--JOB INEQUALITY

The strongest impetus for the adoption of the equal employment opportunity policies covered in this report came from those concerned with the job status of racial minorities. Recent data indicate that the job status of nonwhites is far below that of whites in the labor force.

Every year, for the past thirteen years, the unemployment rate for nonwhites has been twice that for whites. 5/ Even with optimistic expectations for the future of the economy, government statisticians currently project that "the 1975 unemployment rate for nonwhites would still be twice that for the labor force as a whole." 6/ Moreover, when an adjustment is made for the undercount by the Census Bureau of the nonwhite population of working age, the spread between unemployment rates for nonwhites and whites widens. 7/

Besides entry level discrimination, there is also a vertical or skill-level aspect of job inequality for nonwhites. In many industries the jobs held by nonwhites are less desirable, requiring less skill and paying lower wages, than the jobs held by whites. Nonwhites held 10.8 percent of all jobs in 1966. According to Arthur M. Ross, former Commissioner of Labor Statistics, they are "under-represented in the occupations with smaller percentages (all the white collar and skilled-labor categories) and over-represented in those with larger percentages (all the semiskilled, unskilled, and service activities except for protective service workers, as well as farm laborers)."[8] Table 1-1 presents nonwhite employment data by occupation in 1966.

Census data for 1960 permit an analysis of nonwhite employment data holding education constant, although this precludes assessment of differences in scope and quality among school systems. Using this approach, six out of every ten nonwhite high school graduates in 1960 were laborers, service workers, or operatives (all generally low-paying jobs) as compared to three out of ten whites with the same amount of schooling. The extent to which this situation has changed in the past eight years is not known, but available data indicate that vertical job inequality remains serious.

Data for nonwhites reflect only part of the problem of job inequality. They do not reflect unequal job opportunity as a function of sex, religion, or national origin. Job discrimination on these grounds is also prohibited under Title VII of the Civil Rights Act of 1964 and under Executive Order 11246.

There are two basic causes of job inequality. One is discrimination, where an employer consciously or unconsciously does not hire or promote an otherwise qualified minority group person and instead hires or promotes a less qualified person not of a minority group. A second basic reason for the high level of unemployment and relatively low job status of minorities is job-related disadvantages. This refers to situations in which the lack of educational and training opportunities as well as economic hardships disproportionately characteristic of minority group prevent them from qualifying for desirable employment or advancement opportunities.

The relationships between these two causes of job inequality are complex. Some would classify a Negro who fails a pre-employment test for an unskilled job as disadvantaged. Others, concerned about cultural biases in testing and other job selection procedures, might consider the same case an incident of job discrimination. Difficulties also arise when time element considerations enter the picture. Inequalities in educational opportunity often result in members of minority groups being disadvantaged at the time they apply for jobs. Thus, although a given member of a minority group may be classified as disadvantaged in the immediate context of the labor market, his situation, in fact, may be a function of discrimination against minorities at an earlier point in time.

IN PURSUIT OF POLICY GOALS

The government policies described in this report are relatively new. It is not surprising that the results in many instances are limited. At the same time, there is every reason to inquire about how these results can be increased and expedited. From the outset, a major aim of this research has been to determine needs for corrective action as to the scope, implementation process, and administrative machinery for the covered programs and activities. Each of the chapters on major programs concludes

Table 1-1

Nonwhite Workers As a Percent of Total Employment, By Occupation, 1966

Occupation	Percent
TOTAL (10.8)	
WHITE-COLLAR WORKERS (5.0)	
Professional and technical	5.9
Medical and other health	7.3
Teachers, except college	9.6
Other professional and technical	4.3
Managers, officials, and proprietors	2.8
Salaried workers	2.1
Self-employed workers in retail trade	4.4
Self-employed workers, except retail trade	3.8
Clerical workers	6.3
Stenographers, typists, and secretaries	4.4
Other clerical workers	7.0
Sales workers	3.1
Retail trade	3.7
Other sales workers	2.3
BLUE-COLLAR WORKERS (12.2)	
Craftsmen and foremen	6.3
Carpenters	5.7
Construction and craftsmen, except carpenters	8.2
Mechanics and repairmen	6.7
Metal craftsmen, except mechanics	6.1
Other craftsmen and kindred workers	5.5
Foremen, not elsewhere classified	4.0
Operatives	12.9
Drivers and deliverymen	14.0
Other operatives	12.6
Durable goods manufacturing	10.9
Nondurable goods manufacturing	11.6
Other industries	16.7
Nonfarm laborers	25.3
Construction	28.3
Manufacturing	23.7
Other industries	25.2
SERVICE WORKERS (25.8)	
Private household workers	41.8
Service workers, except private household	21.0
Protective service workers	5.1
Waiters, cooks, and bartenders	15.8
Other service workers	26.3
FARM WORKERS (12.6)	
Farmers and farm managers	6.1
Farm laborers and foremen	20.2
Paid workers	28.2
Unpaid family workers	7.2

Source: U. S. Department of Labor, Bureau of Labor Statistics with recommendations for the particular area under review. The final chapter of this report (Chapter 6) includes an analysis with recommendations of the interrelationships among all of the existing Federal Government programs and activities in the field of equal employment opportunity.

In the broadest sense, the government policies covered in this study are part of a three-pronged strategy to achieve equality of opportunity in employment which includes: (1) enforcement of the law and presidential order on job equality; (2) promotional and technical assistance efforts to assist employers in complying voluntarily with these requirements; and (3) the provision of placement, job training, and special counseling and assistance services to disadvantaged members of minority groups.

Beyond identifying major policies, questions must be raised as to the intensity of the commitment of the Federal Government in the areas covered in this study. Some proponents of the 1964 Civil Rights Act undoubtedly anticipated that its equal employment provision would have a broad and immediate impact, primarily through the use of the powers granted to the Attorney General. Likewise, President Kennedy, when he issued his first Executive Order on equal employment opportunity under Federal contracts, indicated that he expected the contract compliance program to have far-reaching effects. The powers stipulated in the order support such expectations. The special assistance goals of Federal manpower and anti-poverty programs are similarly strong and ambitious. These various policy pronouncements added together would appear to constitute a strong and thoroughgoing commitment of the Federal Government to the abolition of inequalities in the labor market.

On the other side, there are important constraints on government agencies operating in the equal employment opportunity field. This is reflected both in the process of policy-making and in the process of policy implementation. Congress in successive stages significantly watered down the strong equal job title originally reported to the House Judiciary Committee for inclusion in the 1964 Civil Rights Act. The Equal Employment Opportunity Commission established in Title VII of the act was not given enforcement powers and lacks jurisdiction in states with their own fair employment laws and for public employees. In the early days of Title VII, the administration delayed appointments to the new Commission and its critics contend that it has never been given the financial resources and political support necessary to do its job properly. As for the contract compliance program, its requirements have not been put into statutory form and Congress has on several occasions succeeded in undermining this program by withholding funds and authority for it to operate. Finally, political restraint in dealing with entrenched institutions, such as the apprenticeship training system, the public employment network, and large corporations with government contracts, often have a serious limiting effect on programs and activities of the Federal Government in the field of equal employment opportunity.

Thus, a more pragmatic formulation of the Federal Government's objectives in the equal job field might be as follows: to make progress towards equality at a rate which balances value considerations of justice and equal opportunity and the interests of certain groups which have long resisted changes in personnel patterns and practices, the outcome frequently being a greater emphasis on voluntary action to achieve positive results than on the use of sanctions to force compliance. This pragmatic statement of policy objectives, to the extent that it applies, indicates the moderating influence of both the opponents of civil rights and those who maintain that laws and policies cannot, and perhaps should not, quickly or automatically banish deeply held social values and attitudes. The history of the American civil rights struggle since the mid-fifties reflects these various cross-pressures. Most civil rights laws have been compromises. In their implementation, they have come up against formidable barriers to government efforts to root out racial discrimination,which often accommodates itself to new civil rights laws and policies by taking a more subtle or indirect form.

Such political facts of life are essential to the understanding of any area of national policy. To define the equal job goals of the Federal Government in this report, consideration is given to the policy itself--substance, history, and the record of appropriations and staff support--plus its interpretation by the agency or agencies responsible for putting the policy into effect. With this as a start, the research in Washington and the field provides a basis in Chapters 2-5 to assess the way administrative processes work in relation to the objectives of the Federal Government in the field of equal employment opportunity and taking into account the political and institutional setting of the governmental processes here under analysis.

FOOTNOTES TO CHAPTER I

1/ Public sector employment is excluded from the scope of this study. The main Federal program area affected is what is commonly referred to as the "in-house" activities of the U. S. Civil Service Commission and other agencies to achieve equal opportunity in Federal employment.

2/ Title VII of the Civil Rights Act of 1964 is reprinted as Appendix A of this report.

3/ Executive Order 11246 is reprinted as Appendix B of this report.

4/ Separate treatment is given to the compliance programs of five Federal agencies: the Department of Defense; General Services Administration; Post Office; the Department of Health, Education, and Welfare; and the Department of Housing and Urban Development.

5/ Bureau of Labor Statistics and Bureau of the Census, Social and Economic Conditions of Negroes in the United States (October 1967), p. 30.

6/ Joseph L. Russell, "Changing Patterns in Employment by Nonwhite Workers," Monthly Labor Review (May 1966), p. 509.

7/ Rashi Fein and Stephan Michelson, "On the Economic Conditions of Negroes," paper (Brookings Institution, November 1967), p. 9 (processed).

8/ Arthur M. Ross, "Negro Employment, 1963-66," p. 4 (processed).

Chapter 2

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

After two decades of State-local experience with fair employment practices commissions (known generally as FEPC's), the Federal Government under Title VII of the Civil Rights Act of 1964 established a national counterpart. 1/ Title VII makes it an unlawful practice "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." [Section 703(a)]

Title VII of the 1964 Civil Rights Act falls far short of the strongest State-local models in the powers it assigns to the Equal Employment Opportunity Commission (EEOC) established under the law. The reasons for the relative weakness of the EEOC can be found in the legislative history of the 1964 Civil Rights Act. The genesis of this Act was President Kennedy's June 1963 civil rights message. Although the President indicated support for pending Federal fair employment practices legislation, such a proposal was not included in the administration bill accompanying his message. Members of the House Judiciary subcommittee responsible for this legislation undertook to rectify this omission. They succeeded in adding a strong equal employment opportunity title to the subcommittee's version of the administration bill. This title was watered down in two major steps, first by the full House Judiciary Committee and later in the leadership compromise presented in the Senate to bring an end to an eighty-two day filibuster. The net result was the establishment of a five-member commission which, in the words of one expert, is "a poor, enfeebled thing . . . (with) the power to conciliate but not to compel." 2/

"A POOR, ENFEEBLED THING"

The EEOC is authorized under Title VII to use "informal methods" to resolve job discrimination complaints against employers, labor unions, employment services, and the sponsors of apprenticeship or other job training programs. The act specifies "conference, conciliation, and persuasion" as the methods the Commission is to use in eliminating the employment practices banned by Title VII.

But even these so-called informal methods cannot be applied immediately on a nationwide basis. The Commission's initial jurisdiction does not include complaints filed in States which have their own laws prohibiting discriminatory employment practices and providing State or local agencies with powers to enforce them. If, however, a State or locality is unable to complete action on a complaint deferred to it by the EEOC within 60 days (120 days in the case of newly established FEPC's), the complainant may then file the same charge with the Federal Equal Employment Opportunity Commission.

Table 2-1

Jurisdictions Deferred to by the EEOC
as of March 1968

Race, Color, Religion, and National Origin

Alaska
California
Colorado
Connecticut
District of Columbia
Delaware
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Jersey
New Mexico
New York
Ohio
Oregon
Pennsylvania
*Philadelphia
*Pittsburgh
Puerto Rico
Rhode Island
Utah
Washington
West Virginia
Wisconsin
Wyoming

Sex Discrimination Cases

**Colorado
Connecticut
District of Columbia
Hawaii
Maryland
Massachusetts
Michigan
Missouri
Nebraska
Nevada
New York
Utah
Wisconsin
Wyoming

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*By special arrangement with the Pennsylvania State Commission.
**In cases involving training only.

Title VII's mandatory deferral policy can be a serious obstacle. Although most of the State FEPC's to which the Federal agency defers have greater powers on paper than the EEOC, they are often reluctant or ill-equipped to use them. Duane Lockard, in a recent study of State-local fair employment laws and their enforcement, concluded, "that the experience with FEP has been a failure to meet its potential."

> The predominant concern with individual cases, the failure to pursue contract compliance procedures, the bureaucratic slowness of many agencies, the failure to establish real contact with the Negro slum dweller and other shortcomings support this conclusion. 3/

Clarence Mitchell, Director of the Washington Bureau of the National Association for the Advancement of Colored People (NAACP), has criticized Title VII's requirement for mandatory state deferral as "pure and unadulterated politics" for which "there is no reason in the world." 4/

Although the EEOC's only recourse in handling complaints under its jurisdiction is "informal methods," the Attorney General does have the power to go to court to enforce Title VII. On his own volition or on referral from the EEOC, he can bring suit whenever he has "reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title." [Section 707(a)] Private litigants can also bring suit under Section 706, but only after they have exhausted the relevant state and EEOC procedures.

Another statutory obstacle which set back the new Commission in its early days was the time limitations on the handling of complaints. The Commission under the law has sixty days "to obtain voluntary compliance." [Section 706(e)] At the end of this period, it is required to notify the complainant that he is permitted, within the next thirty days, to bring civil action against the respondent named in the initial charge.

From the very beginning, this requirement presented a dilemma. Unable to come anywhere near having every charge disposed of within 60 days, notices were initially sent complainants at the end of this period informing them that they had the right to sue under the statute. This procedure, as would be expected, caused much confusion. It was later changed to apply only where a request for such a notice was received.

Fortunately for the Commission the Federal courts have largely obviated this problem. A number of rulings, the first of which was Dent v. St. Louis-San Francisco Railway, have interpreted Title VII as not restricting the private litigant's right to sue if the Commission is unable to complete conciliation within the prescribed time period. The Dent decision states "that the 60 day time period provided for investigation and conciliation of charges is properly to be accorded a directory rather than a mandatory construction." 5/

A final statutory limitation on the EEOC is that it lacks the power to subpoena witnesses for public hearings. The Commission does have the right to hear witnesses and to pay them the same fees paid to witnesses in the Federal courts.[Section 705(g)]

Besides statutory limitations, the EEOC encountered serious political problems in getting under way after the Civil Rights Act of 1964 was signed by President Johnson on July 2, 1964. Title VII was to take effect one year from the date the act was signed. It was anticipated that the interim year would be spent by the Commission for organizational, staffing, and planning purposes. But this did not work out as intended. The first Chairman, Franklin D. Roosevelt, Jr., was nominated with four Commissioners by the President May 10, 1965, ten months after enactment and only two months before the new law was to take effect. Moreover, Roosevelt was appointed for a two-year term, although the statute provided staggered terms of up to five years for the new Commission members. This disappointed many civil rights advocates. They felt that the Chairman should have been appointed for the longest term. Roosevelt's two-year appointment proved to contain an element of prophecy. On May 11, 1966 he resigned to enter the New York gubernatorial campaign with the Commission (then ten months old) struggling to its feet. Four months later, a new Chairman, Stephen N. Shulman, was appointed. He, too, served for a short period, filling out the remainder of Roosevelt's term. Shulman was succeeded by former White House aide, Clifford L. Alexander, Jr., in July of 1967.

Staffing problems also plagued the EEOC in its early years. At the time of Shulman's confirmation in September 1966, the Commission lacked one Commissioner (and shortly afterwards, two), a director of compliance, a director of technical assistance, and a director of public affairs. In mid-1967, viewing the Commission's almost continuous problem of vacancies in key positions, the Wall Street Journal characterized the brief history of the EEOC as "marked by administrative chaos and a revolving door personnel problem." 6/

Altogether, the staff of the EEOC included 400 persons at the end of fiscal 1968, counting both professionals and clericals. Its budget has risen rapidly in relative terms, but recently has come up against resistance. From $3.25 million in 1966, the budget increased to $5.2 million in fiscal

1967 and $6.5 million in fiscal 1968. For fiscal 1969, President Johnson requested a near-doubling of the EEOC budget to $11.8 million. The Congress however appropriated $8.75 million, despite efforts by liberals in Congress to have the President's full request granted.

Three general points to keep in mind about the EEOC as the discussion turns now to the implementation of Title VII are that the Commission is very new, very weak, and very small. Not only did the EEOC have to assemble a staff and develop new administrative systems beginning in mid-1965, it also had to come to grips with a whole array of subtle and highly complex issues of social policy. What is equality and what is discrimination? What is remedial and what is preferential? What are "bona fide occupational qualifications" which warrant job requirements based on sex, and what are not? In sum, we are examining here the birth pangs and infancy of a new agency struggling for life under what have to be regarded as difficult conditions.

The discussion of the implementation of Title VII in this chapter is divided into five parts: (1) the work of the Commissioners; (2) the role of the Washington staff; (3) the role of the EEOC regional offices; (4) the treatment and viewpoint of complainants; and (5) the treatment and viewpoint of respondents, those charged with job discrimination under Title VII .

THE WORK OF THE COMMISSIONERS

Of the five EEOC Commissioners appointed by the President and confirmed by the Senate, the law requires that not more than three shall be members of the same political party. The President is directed to name one member as Chairman and another as Vice Chairman. Commissioners are full-time and currently receive $28,000 per year. The Chairman receives $28,750.

Some critics of the EEOC's structure say that it ought not to be a commission at all. They contend that its work could be done much more efficiently if it had a single chief with the power to make administrative determinations, somewhat on the order of the Administrator of the Wage and Hour Administration in the Department of Labor.

The most common argument for a commission over the single administrator form is that a commission is needed to bring balance and added judgment to rulings made in such a sensitive area as job discrimination. But this reasoning is more applicable to an agency that possesses adjudicatory powers than to the EEOC which presently does not. In the final analysis, the issue of a single administrator versus commission form, like so many others affecting the EEOC, hinges on the granting of cease and desist authority. A bill granting the EEOC cease and desist authority passed the House in 1965 but died in the Senate at the close of the 89th Congress. Hearings were held on a new cease and desist bill in the 90th Congress, but no floor action was taken. If Title VII is made enforceable by the EEOC in this or a similar way, the case for the commission form would carry more force. It can certainly be argued that the power to issue orders enforceable in court in such a sensitive area as civil rights ought not to be assigned to a single administrator. However if cease and desist authority is not granted, the case for a single administrator is much harder to rebut.

The Chairman of the EEOC, as in most commission-type organizations, is "responsible on behalf of the Commission for the administrative operations of the Commission." He is empowered to "appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it [the Commission] deems necessary." [Section 705(a)]

Although the individual Commission members have no specific administrative duties under the statute, the practice has been for each of the members to take a special interest in certain aspects of EEOC operations, for example, specific programs of technical assistance, or certain industries or types of employment discrimination practices.

Each Commissioner has a small staff (generally one or two professional assistants and one or two secretaries) to help him in the evaluation of complaint investigation reports and in his other activities. The evaluation of investigatory reports is by far the most time-consuming responsibility of Commission members. The entire Commission in conference considers every charge investigated by its staff. First, the individual members review the draft decisions, sometimes having drafted them themselves based on the investigatory reports. Then, the Commission as a whole goes over the draft. A majority vote of the Commission is required on each case as to whether there is reasonable cause to proceed to the conciliation phase.

The Basic Choice: An Educational-Promotional v. a Complaint-Oriented Strategy

The best starting point in analyzing the work done by the Commissioners is the question: What is, or should be, the basic mission of the EEOC? As the product of an uneasy Congressional compromise, the agency's intended mission is not immediately apparent in the language of Title VII. Two essentially different interpretations were offered and debated in the early days of the Commission. One interpretation was that the Commission should be predominantly an educational and promotional agency. On the other side, the case was made that the

EEOC was intended to be primarily a complaint handling agency. 7/

While the choice between an educational-promotional and a complaint oriented approach is not a strict either-or proposition, the clear disposition of the EEOC since its inception has been to emphasize complaint handling. Chairman Shulman continued and, in fact, strengthened this emphasis. In a speech in January of 1967, he said, "The Commission's primary road to progress is through the complaint procedure." 8/ Likewise, Chairman Clifford L. Alexander, Jr., speaking a year later in January 1968, stated that "the Commission will continue to give priority to the resolution of individual charges of discrimination." 9/

There is still a third basic approach to be considered which is a variant of the complaint oriented strategy. This is the so-called pattern approach, concentrating on cases that affect industry-wide patterns of job discrimination or employment practices affecting large numbers of employees in major plants or industrial installations.

As it has come of age, the EEOC has placed increased stress on the pattern approach. However, the potential for the future is still great, particularly through the use of Commissioner charges.

The Complaint Handling Process

Even considering the EEOC's lack of jurisdiction in States wtih their own FEPC's, the Commissioners had their hands full when they opened for business in July 1965. The unanticipated high response to Title VII (8,854 complaints in the first year, four times the original estimate) resulted in long delays in meeting statutory deadlines for the processing of complaints. This produced serious backlong problems and according to the Commission's 1965-66 Annual Report, "thousands of hours of uncompensated overtime." 10/ These problems were, if anything, exacerbated by the Commission's elaborate and time consuming procedures for handling complaints.

Consistent with the procedure that the Commission itself determine reasonable cause, it was decided early that the EEOC's two main staff functions--investigation and conciliation--should be sharply distinguished. This is how the system works. An EEOC investigator is assigned to each charge as soon as EEOC jurisdiction is established. No matter what the circumstances or the respondent's disposition to settle, the investigator's role is limited to fact finding. His report, transmitted to Washington by his regional director, is referred on a rotation basis to the individual Commissioner responsible for approving, and in some cases producing, a draft decision. If reasonable cause is found, the conciliation process is handled by an arm of the Commission entirely separate from its investigatory staff. Until early 1967, all conciliations were carried out by a special six-man staff based in Washington. The final conciliation agreement is subject to Commission approval. 11/

State and local FEPC experience suggests an alternative to this sharp separation between the investigation and conciliation processes. 12/ This could be done by having the Commission delegate authority to its investigators or regional directors under certain circumstances to act as mediators and work out an agreement on the scene between the complainant and the respondent. Allowing discretion in this way would cut down on the time required to handle routine complaints. It would thus permit the Commission to allocate more resources to pattern cases with wholesale, as opposed to, retail payoffs.

A number of arguments are made in opposition to blurring the distinction between the investigation and conciliation processes in this way. It is held that if EEOC investigators could agree to a settlement on the scene, there would be a tendency for the respondent to "buy off" the individual complainant without doing anything about the underlying problem of discriminatory personnel practices. According to this view, the reasonable cause finding is the key to conciliation, and conciliation in turn is the key to the effective implementation of Title VII.

Another and closely related argument for the present system is that EEOC reasonable cause findings and conciliation agreements are important to the success in court of meritorious private suits. Permitting investigators to "take a plea" could in some instances undermine the complainant's right to sue under Title VII. Sovern states that "if the Commission is held empowered to conclude a complainant's case, it should be careful not to take a soft settlement when a real possibility of suit is present." 13/

The way in which the EEOC developed its procedures has had an important impact on its backlog problem. Actually, not one--but three--kinds of problems are involved. First, is an investigation backlog. The second backlog involves the drafting and approval of reasonable cause decisions by the Commission. There is also a conciliation backlog, but it is the second backlog which is of greatest importance for this discussion of the role of the Chairman and Commission members.

During its first two years, the Commission took anywhere from three to six months from the date of receipt to reach a decision on an investigation report from one of its field men. These delays were substantially reduced by two methods. A new decision and interpretation section was established to assist the Commissioners in the drafting of decisions. In addition, the Commission in the summer of 1967 employed approximately thirty law students as summer interns to assist the Commissioners and their staffs. Three or four legal interns were assigned to each Commissioner and fifteen were assigned to the new decision and interpretation staff. These two steps increased the Commission's output from roughly twelve decisions per week to eighty or ninety during the summer of 1967 and thirty per week in late 1967 and the beginning of 1968.

The Commission as a "Self-Starter"

To date, the EEOC has placed relatively low priority on what in this report are referred to as "self-starting" activities. There are two basic ways in which the Commission can initiate action on its own: (1) by filing a Commissioner charge, and (2) through various types of technical assistance and promotional efforts to bring about and facilitate voluntary compliance with Title VII.

The Commissioner Charge. Title VII permits charges to be filed by an individual Commissioner "where he has reasonable cause to believe violation of this title has occurred." [Section 706(a)] In the first year, members of the Commission filed forty-one charges, typically in cases where anonymous complaints were received or where a complainant for fear of retaliation would not sign a sworn charge as required by the statute. Since then, the rate has increased more than five-fold. Generally, the Commissioner charge is used by individual Commissioners acting on their own volition. The Commission does not have a set policy on the use of the Commissioner charge.

One possible Commission policy which could be adopted on the use of Commissioner charges involves tying this authority in on a systematic basis with the EEOC's data gathering processes. The EEOC is empowered under the statute to require all covered employers, labor organizations, employment agencies, and joint labor-management apprenticeship training programs to "make and keep . . . records relevant to the determinations of whether unlawful employment practices have been or are being committed." [Section 709(b)] Under this authority, Commission officials (in cooperation with the Office of Federal Contract Compliance and Plans for Progress) developed the Standard Employer Information Report EEO-1, first used in 1966. This report, of which some 40,000 were received in 1966, provides the Federal Government with detailed information annually on the race and sex composition of the labor force of all reporting units. It is a valuable data source for program planning purposes and for facilitating investigations by EEOC field personnel and contract compliance specialists. But EEO-1 data has even greater potential. Employers and unions with disproportionately low minority group representation in relation to population could be systematically selected out and investigated under authority of a Commissioner charge on the grounds that EEO-1 data indicate possibly or inferentially discriminatory employment patterns.

A potential legal impediment to this system is the prohibition in Title VII against using information on minority group "imbalance" as a basis for bringing about "preferential treatment." [Section 703(j)] To get around this problem, if it is a problem, the Commission could send out a questionnaire on personnel practices to employers selected on the basis of EEO-1 data. This information, supplementing the EEO-1 data, could then be used to decide whether to file a Commissioner charge. If it is decided to file a Commissioner charge, an investigator would be assigned and the remaining steps would follow the usual Commission procedures.

Technical Assistance. The term "technical assistance," despite its lacklustre quality, has come to have a very special meaning in the lexicon of the EEOC. It is contained in Title VII, which confers upon the Commission the authority to "furnish to persons subject to this title such technical assistance as they may request." [Section 705(6)] The objective of technical assistance as defined by the Commission is to bring about "affirmative action to promote equal employment opportunity on the part of employers, labor unions, and community organizations." 14/ The fact that the term, affirmative action is used in this context is a significant one. It represents a little recognized point on which the EEOC and the Federal Government's contract compliance program are marching in unison. Affirmative action is the central concept of the Federal Government's contract compliance program described in Chapter 4.

The EEOC as of this writing has a technical assistance staff of fourteen professionals, most of whom are located in Washington. Commissioners and staff members in the field also become involved in technical assistance activities insofar as they make speeches, appear on panels, and in general promote equal employment opportunity. In contrast to these essentially routine functions, full-time technical assistance personnel stress specific forms of aid. An illustration is the "new plants" program. Under this program, EEOC technical assistance officers identify sites where new facilities are being set up, or old plants expanded, and act as a catalyst between the company and the minority community in locating and utilizing previously untapped labor resources.

Industry Hearings. Another EEOC self-starting activity, closely related to its technical assistance activites, is the sponsorship of industry hearings on equal employment opportunity. Although the Commission does not have subpoena powers, it held what was termed a "forum" in January of 1967 on employment in the textile industry of North and South Carolina. The two-day textile forum was an outgrowth of a research report done for the Commission in 1966 by Professor Donald D. Osborn of North Carolina State University. 15/ Testimony was presented by forty witnesses representing management, labor, government, and education, as well as a number of individual citizens. Commission officials regarded the textile forum as a successful innovation.

> ...much valuable information was shared by the participants in the forum. Equally significant was the fact that, through the forum technique, the Commission was able to focus public attention on employment patterns of a major American industry, and to enlist the interest of a broad cross-section of the community in a continuing program to develop the human resources of the area. The Commission envisions this forum as a firm foundation for a cooperative effort to enlarge job opportunities for the Negro citizens of the Carolinas, a view which we hope is shared by all who attended and participated. 16/

Based on the results of the textile forum, the Commission launched an interagency program within the Federal Government to promote equal employment opportunity in the textile industry of the Carolinas.

A variant on the textile forum was the drug industry meeting held October 6, 1967 in Washington. Unlike the textile forum which was public, the drug industry meeting was closed. Participants included the presidents of 23 pharmaceutical companies and officers of three others. The meeting was attended by representatives of several Federal agencies. It was jointly sponsored by the EEOC and the Food and Drug Administration, the premise being that the latter's participation would be an "inducement" for private industry to participate. Chairman Clifford L. Alexander, Jr., Chairman of the EEOC, described the two main purposes of the drug industry meeting as follows:

> First, we want to show each of you, who is undoubtedly aware of minority employment patterns in your own company, the picture for the industry as a whole. We do not believe it is a picture of which you will be proud.
>
> Second, we want to describe the kind of effort that could help change that picture. We want to attempt to avoid, in both your interest and ours, the time consuming complaint process which could well be the inevitable alternative to the kind of voluntary action we seek to initiate today. 17/

Pursuant to the first objective, the EEOC issued a study September 29, on "Employment Patterns in the Drug Industry, 1966". 18/ In his speech at the meeting, Chairman Alexander stressed the second objective, the need for the industry to undertake immediate voluntary actions. A similar theme was sounded by Dr. James L. Goddard, Commissioner of Food and Drugs. He urged preventive medicine.

> ...We want to be of assistance, particularly in bringing industry and Government together before misunderstandings arise. Our staff is ready to discuss with your people what some of your concerns may be. We are also prepared, along with the staff of the Equal Employment Opportunity Commission, to provide technical assistance and specific materials when these are needed as well. 19/

On the basis of experience with the textile and drug industries, a widely publicized hearing in New York City on white collar employment was held in January of 1968. Like the others, this hearing was based on a series of studies, in this case done by the Commission's research staff.

> The hearings proceed from Commission findings of widespread under-utilization of Negroes and Puerto Ricans in white collar jobs; reports from 4,249 business establishments in New York City showed 1,827 without a single Negro white collar employee and 1,936 without a single Spanish-Surnamed American white collar employee in 1966. The reports are required annually from employers with 100 or more employees and holders of Federal Government contracts of $50,000 with 50 or more employees. 20/

The objective of the white collar hearings was basically informational. Chairman Alexander described the purpose: "To point out where and why discrimination, however unintentional, exists. We want to explore why certain industries and companies have made progress in utilizing minorities in white collar positions while others have lagged far behind." 21/ Alexander said that New York City was chosen because "it serves as a central headquarters for many of the leading institutions around the country" and because it "offers an abundant supply of well-qualified minorities." 22/

> It is our hope that the constructive results which flow from these hearings will be transmitted to corporate affiliates around the nation. 23/

Following up on the white collar industry hearing, the Commission took a number of steps on what it found to be serious problems. It also announced that a hearing would be held one year later to determine whether affirmative actions promised at the hearings had been carried out. Among the immediate steps taken, the Commission filed ten Commissioner charges with the New York State Commission on Human Rights, worked with the U. S. Treasury Department to stimulate compliance reviews under Executive Order 11246 of several New York banks, sent 25 cases to the Labor Department for processing under the Executive Order, and referred four cases for possible action to the Justice Department.

The Testing Guidelines. Another important Commission initiated action was the issuance in August 1966 of its "Guidelines on Employment Testing Procedures." Testing is one of the most difficult policy issues growing out of the enactment of Title VII. Another is employment seniority systems. The need in both areas is to define the kinds of employment policies and procedures which constitute a violation of the law. The Commission's testing guidelines are summarized below in the section on the employer's view of Title VII. 24/ They consist of general standards on when and how to use employment tests so that they do not work unfairly to the disadvantage of members of minority groups. The guidelines were developed on the basis of a report to the Commission by a panel of psychologists in May of 1966.

Summary on Commission Strategy (1965-67)

Summarizing the work of the Chairman and Commissioners in the first two years of the EEOC (1965-67), initial priority was placed on the development of the slow and unfortunately rather cumbersome procedures for handling the heavy load of job discrimination charges under Title VII. Efforts have been made recently to increase the speed and productivity of this system. The use of the self-starting techniques (both promotional and enforcement oriented) were relegated to a secondary position in relation to complaint handling. Some would dispute these priorities. The essential point for this study is that the Commission shaped its own distinctive processes to implement the broad policy goals of Congress and the President in Title VII of the Civil Rights Act of 1964. How these processes take hold as we move on down through the administrative system remains to be seen.

THE WASHINGTON HEADQUARTERS STAFF

The Washington headquarters staff of the EEOC is composed of five offices and four special staffs. The largest unit, the office of compliance, had thirty-seven permanent Washington-based employees in 1967. The other four offices are: administration (twenty-seven positions), technical assistance (fourteen positions), General Counsel (fourteen positions), and research (eighteen positions). The four special staffs are: public affairs (eight positions), state-local liaison (six positions), congressional liaison (two positions), and the program review staff established in 1967. All of these offices and staffs report to the Staff Director with the exception of the public affairs and congressional liaison staffs which report directly to the Chairman.

Although the organizational chart has remained basically unchanged since the Commission began operations, major changes were made in Washington when Chairman Shulman took office in the fall of 1966. He brought in a group of new staff members, referred to in one newspaper account as "a whiz kid staff of young executives . . . in the McNamara style." 25/ Under the new leadership, a special effort was made to increase productivity. The first priority was the three-part complaint backlog described as a "moving bubble" by one of the new staff appointees. "You solve one backlog and you simply push the problem onto another phase of the complaint handling process."

Two approaches were taken within the Commission staff to locate the moving bubble and reduce its size. For the short-run, a new control system was set up. Its purposes are: (1) to pinpoint the exact location within the Commission of every pending charge, (2) to measure the time taken for each of the various processes in handling charges, and (3) to serve as the basis for deploying staff and resources at points of maximum need. On a longer-term basis, the Commission began developing a computerized informational system. It is designed to make record-keeping operations more efficient and to permit faster processing of pending cases by providing ready access to past experience where the same or similar discriminatory practices were involved. 26/

The Conciliation Process

The most important EEOC headquarters operation is conciliation. This process was developed and until recently carried out entirely by Washington personnel. Except for the nearly automatic Commission approval of conciliation agreements, the Commissioners themselves are little involved in this process. 27/

The EEOC's conciliation system was designed from the start to give as much thrust as possible to the operations of the new agency. Most importantly, the conciliation process was structured to absorb the power of the charging party to go to court. This is done by having the charging party, if conciliation is successful, waive his right to file a private suit under Title VII in exchange for "enforceable" promises by the respondent to end certain discriminatory practices. In the 1967 "Guidelines for Conciliation," the conciliator is instructed to explain this arrangement to the respondent in the following terms:

> The conciliator should...explain that, if the conciliation is unsuccessful, the charging party may maintain a suit in Federal Court. In addition, the Commission may wish to refer the matter to the Attorney General of the United States, who is authorized to bring suits on behalf of the Government of the United States, in cases which involve a "pattern or practice" of discrimination. He should add that the purpose of the commission is to settle matters without litigation where possible. The conciliator should explain that, in order to achieve this objective, he is seeking a written agreement which, when signed by the complainant, will waive and release his right to sue, and when approved by the Commission, will assure that the matter will not be referred by the Commission to the United States Attorney General. Such approval will protect the respondent to some extent in the event other parties raise questions concerning activities carried out under such an agreement.
>
> The conciliator should point out that the agreement will include a clause stating that respondent does not admit any violation of Title VII. 28/

Besides co-opting the charging party's right to sue the conciliator's leverage is enhanced by the Commission's finding of reasonable cause which triggers the conciliation process. The reasonable cause finding makes clear to the respondent that the Commission stands behind its agent. Backed in this way by the charging party's waiver of his right to sue and the finding of reasonable cause, the conciliator has more real power in many situations than the Commissioners themselves. Moreover, this relationship between the Commission and its conciliators is not likely to be disturbed even if the EEOC is granted cease and desist authority by Congress.

A major argument made by the Commission at the 1967 Senate hearings on the cease and desist bill was that it would strengthen the conciliation process.

> The success rate of EEOC conciliations would increase if persuasion could be backed up by the power of enforcement. By providing enforcement power, the Congress would enhance, not degrade, the Commission's conciliation role. It would produce more, not fewer, conciliation agreements. 29/

One of the earliest and most publicized EEOC conciliation agreements was with the Newport News Shipbuilding and Drydock Company signed in March 1966. This company (which employs nearly 20,000 persons) builds nuclear submarines, aircraft carriers, and other ships for the government. Its contracts run into billions. Investigations revealed a number of Title VII violations involving hiring, promotions, and the limited representation of Negroes in supervisory and skilled job categories. In addition to the EEOC which had forty-one complaints from Negroes against the Newport News Company, two other Federal agencies--the Departments of Labor and Defense--were involved in the Newport News case. Both were involved under Executive Order 11246 barring job discrimination by government contractors. The EEOC's Newport News conciliation agreement set a number of precedents. An EEOC Newsletter described the principal terms of the agreement as follows:

-- immediate promotion of three Negroes who had filed charges to supervisory positions;

-- rapid conciliation of the complaints of the other thirty-eight charging parties;

-- further opening of all job classifications to all employees without discrimination;

-- complete elimination of segregated facilities;

-- revision of promotion policies and practices to improve opportunities for qualified Negroes to and within supervisory levels;

-- improvement of transfer procedure to other departments for Negroes;

-- re-evaluation of Negro employee skills, institution of training programs to develop and improve Negro skills, promotion and pay adjustment on the basis of such evaluation and/or training;

-- giving qualified Negroes equal opportunity to apprenticeship programs and actively recruiting for such programs in Negro schools.

The company also agreed to:

> Post a non-discrimination policy statement, signed by the president, throughout the Yard and attach it to the paycheck of each full time employee within thirty days of the agreement signing;
>
> Assemble all supervisory employees to read the policy statement to advise them of the terms of the agreement and to instruct them to advise employees in group meetings that a violation of such policy shall result in disciplinary action--including discharge where appropriate. 30/

Other illustrations of provisions in conciliation agreements were given in the 1965-67 report of the Commission's Office of conciliations. The examples below are "sanitized" (identifying names omitted) from actual conciliation agreements. They are divided according to the types of provision.

1. Provisions for Review

> (The company will)...upgrade and advance qualified employees without regard to race, color, religion or national origin to positions as journeyman-mechanics, when and where the workload requires....The company, prior to the Conciliation conference in Washington, D.C. on May 2-3, 1966, had undertaken a review of the qualifications, ability, skills, health and attendance of each Negro production employee and the result of such evaluation has been compiled in a well-bound book now in the possession of the company. It is agreed that the company will provide the Commission, the Department of Defense and the Office of Federal Contract Compliance with copies of such self-evaluation

on or before July 15, 1966.

In order to effectuate the "promotion from within policy" the company agrees to commence an inventory of skills and abilities of the Negroes presently employed and will continue to update this inventory as the employees avail themselves of any additional education and training.

2. Establishment of Written Conditions for Employment:

The respondent has reduced to writing the general qualifications for employment which are used in considering all applicants and will make them known to applicants as they apply for jobs.

3. Hiring of Charging Party: Preferential Hiring List

The respondent will offer immediate employment as an automatic bobbin cleaning operator to ****, charging party, and will promote her to other production jobs on the same basis as all other employees are promoted. In the event the charging party is unable to accept immediate employment, respondent will offer her the next available production job.

4. Refusal of Employment, Monetary Settlement

The respondent herewith offers employment to the charging party, which offer is declined by the said charging party inasmuch as he has secured other employment. The respondent agrees to pay to the charging party, and the charging party agrees to accept in full and complete settlement of this matter, the sum of Four Hundred Dollars ($400.00).

5. Agreement to Recruit Negro Employees

Respondent will work with State of Tennessee, Department of Employment Security in seeking qualified Negro males and females for employment in the plant.

6. Immediate Promotion

The respondent agrees to promote **** to the position of leaderman immediately. The respondent agrees to promote **** to the position of work leaderman immediately and he will continue to be in a position to advance to the position of general leaderman at future date.

7. Making Promotional Opportunities Meaningful--"Red Circling" of Rates on Transfer and Transfer and Promotion

When an employee is promoted from a laborer classification

> (the predominantly Negro jobs) to a position of a higher classification where the beginning rate is lower than his rate before promotion, he will be "red circled" (his rate of pay maintained until such time as his rate in the new position exceeds his rate in the laborer classification of the job to which the employee is promoted).
>
> 8. Segregated Facilities
>
> No later than July 24, 1966, the cafeteria will be remodeled in accordance with the attached sketch to: (1) remove wall from the middle of the room, (2) rearrange steam tables to run parallel to the front wall of cafeteria, (3) mark one set of doors for entry and the other for exit and rehang said doors so that they will open in one direction only. 31/

Thus far, only limited gains have been achieved through the EEOC conciliation process, in part reflective of the Commission's lack of enforcement powers. Through February 1968, 48 percent of the conciliations attempted have been determined to be "successful," meaning a signed agreement was obtained and approved by the Commission. Taken altogether, in the thirty-two months from July 1965 through February 1968, the Commission successfully completed 286 conciliations involving 754 individual complaints. Partially successful conciliations are estimated to have provided direct relief through the conciliation process to another 72 complainants. Thus, 826 persons were affected directly by EEOC conciliations according to the agency's own figures.

The Commission also estimates that over 20,000 persons have been affected indirectly (i.e., persons other than complainants who received new jobs or promotions) by successful EEOC conciliations. But this figure is at best a rough guess based on assumptions which are extremely difficult to make, much less prove. Even if we accept these figures and estimates, the impact of the EEOC in its first

32 months hardly makes a dent in relation to the Nation's total labor force.

Thus, the question arises: What kind of a generalized impact have Title VII and EEOC activities had in bringing about personnel policy changes on the part of employers and unions to promote equal employment opportunity? Here, we are interested in the effect of EEOC activities and decisions on personnel systems. This includes recruitment, hiring, job assignment, promotion, layoff, and recall. The impact of Title VII in these terms cannot be measured even with the kind of rough precision used to arrive at the estimate above for persons directly and indirectly affected by EEOC conciliation agreements. Nevertheless, assessment of the broader impact of EEOC activities is necessary to an appraisal of the agency's role and effectiveness. The sections which follow on the implementation of Title VII in the field and on the treatment and viewpoint of complainants and respondents give consideration to this broader impact of the activities of the EEOC.

THE REGIONAL OFFICE

As would be expected with a new agency, the EEOC's field staff was set up considerably later than the headquarters staff. When the Commission began operations, complaint investigations were handled either by Washington personnel or "loaners" in the field, that is, personnel from other Federal agencies loaned to the EEOC for short periods, usually one to three months. Many "loaners" later became permanent staff members. But field offices were not established and operating as such until at least six months after the July 2, 1965 opening date for the Commission. The first field office opened in Atlanta in February 1966. The most recent regional offices established were in Washington (covering the District of Columbia, Delaware, Maryland, West Virginia, and Virginia) which opened in May 1967, and Birmingham, Alabama opened in October 1967.

TABLE 2-2

EEOC Regional Offices

Regional Office	Opening Date	Employees (As of August 1967)
Atlanta	February 1966	36
Chicago	June 1966	9
Cleveland	June 1966	13
Los Angeles	July 1966	10
New Orleans	July 1966	10
New York	July 1966	22
San Francisco	July 1966	14
Albuquerque	August 1966	9
Kansas City (Missouri)	August 1966	9
Austin	October 1966	16
Washington, D.C.	May 1967	16
Birmingham	October 1967	--

Source: Equal Employment Opportunity Commission

Decentralization of EEOC Operations

Beginning in the spring of 1967 under Shulman, a strong effort has been made to decentralize EEOC staff operations. The first step in the handling of complaints--the analysis process--was moved out of the Washington headquarters and into the field in mid-1967. Prior to this move, all complaints were referred to the EEOC compliance office in Washington which acted on initial disposition. Compliance office personnel determined whether the discriminatory practice alleged was covered under Title VII, whether the charge was to be deferred to a state FEPC, and finally whether charges within the EEOC's initial jurisdiction were complete enough to be used as the basis for an investigation. This process is now conducted entirely by the regional offices. The second major decentralizing move was the initiation of a training program for conciliators who would be permanently stationed in the field. (During the first two years of EEOC operations, all conciliations were conducted out of Washington.)

Although decentralization applies uniformly to all regions, EEOC regional offices differ markedly in their basic role and workload. The key to these differences is state FEP laws. A much higher proportion of the workload of EEOC regional offices in the North consists of sex discrimination cases than is the case of regional offices in the South. On race discrimination charges, the EEOC's northern regional offices in most instances defer to state FEPC's. They only became involved in these cases when the state fails to satisfy the charging party within the prescribed time periods (120 days for new FEPC's and 60 days for others) or if state FEPC staff and funds are so limited that as a practical matter they simply defer cases back to the EEOC. This applies particularly to small states outside of the South which have strong fair employment practice laws but weak and understaffed enforcement agencies.

Complaint Handling in the Field

Based on interviews in the field in early 1967, Washington's triple backlog has much more of a one-dimensional character. A number of the EEOC field personnel interviewed complained about delays in reaching decisions on the part of the Commission. Several respondents maintained that the strict separation of the investigation and conciliation processes unnecessarily holds up action on what they consider routine cases. As an illustration, one investigator said that if an employer asks him how he can cooperate on a separate facilities case, he cannot simply tell the employer to take down a a wall dividing white and Negro washroom facilities. Then, it would be all over, and resolving complaints is not his job.

This concern about the headquarter's backlog on the part of field staffers was widely noted, but must be kept in perspective. Recent steps to speed decision-writing and decentralize EEOC operations tend to offset these criticisms. Moreover, the relatively independent role of regional personnel in the technical assistance area somewhat counterbalances concerns they may have about the tight rein that Washington has kept on complaint handling.

Technical Assistance in the Field

Consistent with the observations above about differences in complaint handling among regional personnel, the field research for this study indicated that technical assistance efforts tend to be more heavily stressed by EEOC regional offices in the North than in the South. In part, this is because in the South the investigative backlog is larger than in other regions. But there is also a motivational element involved.

On the basis of interviews with field personnel in half of the cities in which the EEOC has regional offices, it was found that many EEOC field personnel (both North and South) consider themselves as working in this area because of their dedication to civil rights, here defined as meaning improved interracial relations. Technical assistance in the North can serve as the channel by which EEOC field personnel, who ordinarily handle fewer race discrimination cases than their southern counterparts, can become involved in efforts to combat racial discrimination. Another and related reason for stressing technical assistance in the North is that job discrimination tends to be less overt than in the South. It often cannot be dealt with through the complaint process, requiring instead special efforts to persuade employers and unions to remove institutionalized barriers to the greater utilization of minority workers.

While technical assistance tends to be emphasized more heavily in the North than in the South, the bulk of the work done by the EEOC's field staff has been and continues to be complaint investigations. Moreover, now that decisions are flowing from the Commission at a faster rate, the EEOC's backlog shows signs of becoming predominantly an investigatory problem. During fiscal 1967, the Commission completed 3,316 investigations. But at the end of the fiscal year--not counting new charges--it had another 3,000 still in the pipeline or returned from the states. Meanwhile, the rate of new charges was rising. The total of 13,435 new charges in fiscal 1967 was 4,581 greater than 1966. The moving bubble continues to be vexatious.

THE COMPLAINANT

This section is concerned with the treatment and viewpoint of two groups. First, is the individual aggrieved party. Behind him, is the network of organizations working to spread an awareness of available legal recourses against job discrimination and to assist complainants. The latter includes both organizations devoted to civil rights in the traditional sense, involving racial and national origin minorities, and organizations working to combat discrimination based on sex. In the discussion which follows, separate treatment is given to race and sex discrimination, the two largest groupings of EEOC cases.

The proportion of religious discrimination charges filed with the EEOC has been very small, less than 2 percent of the total to date. Interest in this subject within the Commission has been correspondingly limited, and it is therefore not treated separately.

Civil Rights Organizations

Roughly one-half of the race discrimination caseload of the EEOC has been generated by two organizations--the NAACP and the Legal Defense Fund. (The latter is formally the NAACP Legal Defense and Educational Fund, Inc., although it is a separate and distinct organization from the NAACP.) Many civil rights activists in these and other organizations are critical of limitations in the legislation establishing the EEOC and in its funding by the Congress. According to the Legal Defense Fund, "The EEOC is woefully lacking in power, funds, and staff, as illustrated by its performance." 32/ Herbert Hill, Labor Secretary of the NAACP, describes the EEOC as, "at best a conciliation agency its major virtue has been that, however awkward and clumsy, it provides a aprocedure for getting job discrimination cases into the Federal courts." 33/ In the even blunter words of one respondent, the leader of a Mexican-American organization," it's /the EEOC's/ hammer simply is not heavy enough."

Spokesmen for national and local civil rights groups also criticize the low priority assigned to the EEOC within the executive branch and the reluctance on the part of the Congress to support it. Cited as illustrations are low-level appropriations, presidential delays in the past in appointing Commission members, and the slow paced Congressional consideration of the cease and desist bill. Whitney M. Young, Jr., Executive Director of the National Urban League, charged in 1967 that the EEOC's inability to enforce Title VII undermines confidence in the government's commitment to civil rights.

> The actual agency experience, which has demonstrated that the Commission [the EEOC] cannot enforce compliance, has given rise to disillusionment and lack of confidence. These conditions have led the American Negro to suspect that legislation, supposedly guaranteed to provide equality of opportunity, is full of loopholes and political terminology. He is rapidly losing faith in the democratic process to achieve his goal of equality of opportunity. 34/

Complaints about issues such as the EEOC's limited enforcement power and funding reflect problems which for the most part cannot be attributed to the Commission. There are, however, criticisms aimed directly at the Commission. One charge is that the Commission does not concentrate enough on patterns of discrimination. According to Leonard H. Carter, Western Regional Director of the NAACP:

> The single complaint process is totally inadequate. Going beyond individual cases and getting at patterns is the whole hope of Title VII. 35/

Civil rights leaders canvassed by questionnaire for this study came down hardest on delays in processing complaints. For example:

> After the first flurry of hope among Negroes in small town or rural areas, where complaints were filed, there came a feeling of complete hopelessness, when the complainants never heard from the EEOC.
>
> Present procedures of the EEOC are too slow causing complainants to lose faith in the Commission.
>
> I filed twenty-seven complaints two years ago and some thirty this past year and we haven't heard from them yet.
>
> I would hazard the guess that the backlog of cases [of the EEOC] would deter meaningful case settlements.
>
> There is too much time between filing complaints and investigation, too much time until complaints are settled.

The views expressed by the leaders of civil rights groups in many respects have their parallels in the experiences of individual EEOC complainants.

The Individual Complainant in Cases of Discrimination Based on Race

Table 2-3 presents a breakdown of race discrimination for charges filed with, and accepted by, the EEOC against employers for the first eighteen months of its existence.

TABLE 2-3

Types of Employer Practices for
Race Discrimination Charges
Filed with the EEOC

July 1-December 31, 1966

	Number	Percent
Hiring	407	23.7
Discharge	234	13.6
Compensation	156	9.1
Terms	345	20.1
Conditions	263	15.2
Classification	300	17.5
Miscellaneous	14	.8
TOTAL	1,719	100.0

Source: EEOC Appropriations for 1968, Hearings before a Subcommittee of the House Committee on Appropriations, 90 Congress, 1st Session (1967), p. 154.

Of total race discrimination charges received during this period, 14 percent were deferred for state or local FEPC action. Another 25 percent were sent back to complainants with a request for additional information. Thus, some 40 percent of the charging parties were no doubt disappointed with the first word they received from the Commission, although the fault in these situations was not the Commission's.

These figures on Title VII charges tell only part of the story. Many individuals subjected to employment discrimination never file complaints. The law requires that charges of job discrimination be filed "in writing under oath." [Section 706(e)] It was widely noted in the field research that fear of retaliation--a fear which is often justified--discourages minority group members from filing charges. One respondent, a Negro civil rights leader in the South, estimated that less than 10 percent of the Negroes in his community who have grievances would be willing to make sworn complaints to the EEOC. This problem is undoubtedly more marked in cases of discrimination on the job than in those involving refusal to hire. In the former case, the individual has a job and is subject to intimidation. In the latter, he has less (if anything) to lose by filing a complaint with the EEOC. Another reason that potential complainants do not come forward is limited knowledge about available legal recourse. One respondent described the situation as follows:

> Personal acquaintance with civil rights officials, complainants and politicians in all these cities has convinced me that the average citizen, and Negroes in particular, are largely unaware of the proper paths through which legitimate complaints may be processed to successful redress. It is small wonder, because the paths are complicated and time-consuming. Most people would be frightened merely by the paperwork involved.

To give meaning to the impact of Title VII on individuals who have grievances, it is useful to put together a composite of the viewpoint of complainants or potential complainant under Title VII. The situation of the aggrieved party in a race discrimination case is likely to involve some or all of the following elements:

First of all, should the aggrieved party be employed, he is likely to fear retaliation if he files a charge and brings the Federal Government down on his employer. His knowledge of the law and its enforcement machinery can also be expected to be limited. In order for him to overcome these twin barriers and actually file a charge, the aggrieved party will probably require the assistance of a civil rights organization such as the NAACP or the Legal Defense Fund. All things considered, it requires an informed and quite outspoken person to take advantage of this legal recourse. The timid and less vocal may have grievances but never be heard from by the EEOC or a state or local FEPC.

Even if the aggrieved citizen does brave the system, he may be rebuffed. His charge may lack sufficient information to commence an investigation, although the Commission treats even basic statements of a problem as sufficient to commence the investigatory process. Moreover, if the complainant is a Northerner, he is likely to be informed that his case has been deferred to a state FEPC, an outcome about which he may have serious qualms in light of the limited performance, staff, and resources of many state and local fair employment agencies.

Should it work out that the complainant's case actually is investigated by the EEOC, he can be in for long delays. He may still end up dissatisfied because of the EEOC's limited authority for bringing about a resolution once reasonable cause is found. The charging party may then decide to file suit with the aid and support of an organization which can finance his day in court. But this, too, is no easy process. There are likely to be more delays and undoubtedly strong and well-financed opposition from the other side. There is always the chance that the aggrieved party will not obtain an award of damages or a steady job as a result of all of his efforts. From the point of view of its intended clientele, Title VII's route to justice is long and lumpy.

The Viewpoint of Complainants and Supporting Organizations in Case of Discrimination Based on Sex

The only major amendment to Title VII adopted in the House was the ban against discrimination based on sex. This amendment was offered by Rules Committee Chairman Howard W. Smith of Virginia. It was adopted with strong southern support by a vote of 168-133, despite Labor Department opposition and an attack by House Judiciary Committee Chairman Emanuel Celler that it was "illogical, ill-timed, ill-placed, and improper." 36/

The charge is frequently made that Congressional opponents of civil rights, particularly Southerners who voted for the amendment adding the sex discrimination ban to Title VII, did so as a means of hamstringing the new agency established to administer this title. If this was the objective--that is, to take resources and energy away from the handling of race discrimination matters--it surely can be said to have succeeded. Well over a third of the complaints received in the first year of operations of the EEOC alleged discrimination based on sex, and many of the most difficult cases before the Commission (for example, the long unresolved airlines stewardess cases) involve sex discrimination. The nature of the problems alleged in matters before the EEOC in fiscal 1966 involving sex discrimination are ahown in Table 2-4.

TABLE 2-4

Nature of the Problem Alleged in Sex Discrimination Matters
Received and Analyzed by the EEOC
July 2, 1965-June 30, 1966

Hiring		170
Men	35	
Women	135	
Promotion		97
Job Classification		213
Wage Differential		93
Benefits		726
Do not hire women with children		4
Do not hire women as trainees		4
Layoff, Recall, and Seniority		588
Fire women when marry		45
Fire women when have children		4
Fire women and replace with men		47
Age limitation for women		31
Job opportunities--advertising		9
State Labor Laws for Women		291
Overtime	262	
Weight	16	
Rest Periods	2	
General Allegations	11	
Union refusal to process grievances		12
Employment Agency Referral		9
Miscellaneous		80
Firing (unexplained)		9
TOTAL		2,432

Source: First Annual Report, Equal Employment Opportunity Commission, House Document 86, 90th Congress, 1st Session (1967), p. 64.

As would be expected, the groups which have been working over the years for equal job rights for women take very seriously the ban against sex discrimination in Title VII. They have been active in pressing cases before the Commission.

And, as might also have been anticipated, a number of these groups are not happy with the Commission, believing that it has devoted too much of its attention and energy to race discrimination matters. In short, they want *equal* treatment. The grievances of proponents of equal job rights for women were stated succinctly in a letter to President Johnson from a new organization, the National Organization for Women (NOW), organized in October of 1966.

> Our greatest concern today is that the Equal Employment Opportunity Commission should be able and willing to fulfill its legal mandate to enforce the prohibitions against discrimination in employment based upon sex, under Title VII of the Civil Rights Act of 1964.
>
> In its responsibility to fulfill this mandate, we believe the Commission is hamper by vacancies on its staff, by the absence of women in top positions on the Commission staff and by a reluctance among some of its male members to combat sex discrimination as vigorously as they seek to combat racial discrimination. [37]

In response to such criticism, Commission spokesmen contend that sex discrimination cases are generally not as complex as race cases and can be disposed of with less expenditure of time and resources. Former Chairman Shulman made this point in his 1967 appearance before the House Committee on Appropriations.

> For example, frequently you will find listings in companies of *x* jobs for women and *y* jobs for men, but you will very rarely find listings of x jobs for Negroes and y jobs for whites, so it requires an investigation of some depth to determine what the differences are with respect to Negroes and whites in order to make a determination of whether of not discrimination exists. It does not require a very lengthy investigation to determine the same subject with respect to sex discrimination.
>
> Therefore, while the sex cases constitute somewhat more than a third of the cases recommended for investigation, they would constitute substantially less than that with regard to the resources expended. [38]

The root of the criticism of the Commission by women's organizations is what they regard as its reluctance to take a position on what do or do not constitute "bona fide occupational qualifications" for job differentiation based on sex. Spokesmen for women's groups contend that when a statute is clear, as they believe Title VII to be, there is no justification for delaying its implementation.

In general, the evidence supports the contention that the Commission has been slow to act on sex discrimination issues. When it does act, It has tended to take positions which are short on specifics, leaving for subsequent cases the precise interpretation of Title VII. On state protective laws, for example, the Commission on December 2, 1965 prohibited firms from refusing women jobs merely because state law requires special conditions for employment (e.g., rest periods or facilities) different from those for men. It did not at this time spell out any specific guidelines. Then, ten months later, the Commission reversed itself, ruling that all state protective law cases should be taken to the courts. A year later, the Commission switched its position again, rescinding the August 1966 policy statement and reaffirming its earlier December 1965 position. The net effect was that the EEOC currently maintains that it can hold that Title VII supersedes State protective laws. This still leaves open the determination of specific conditions for employment under State protective laws which can and cannot be used as a basis for refusing to hire women. 39/

Similarly, in the widely publicized airline stewardess cases, the EEOC took over two years to issue its ruling that sex is not a bona fide occupational qualification for the position of flight cabin attendant. Even then, it deferred action on age and marital status requirements for female flight cabin attendants. 40/

There are a number of areas in which the Commission has, without such long delays, defined Title VII's ban against sex discrimination. According to the Commission, women must be given equal access to overtime opportunities and training programs. It has also been ruled that collective bargaining agreements which require different treatment for males and females are superseded by Title VII. Likewise, the Commission has outlawed most employer policies against hiring married women or requiring that female employees resign upon becoming married.

Although sex discrimination issues have taken considerable time and effort, the fact remains that the emphasis of most Commission members and Washington staff officials has been on race discrimination. As a rule, one Commissioner and two or three Washington staff members take a special interest in the job rights of women. In effect, they constitute a minority boring from within the Commission to have what they regard as proper recognition given to Title VII's ban against job discrimination based on sex. On the other side, representatives within the Commission of what might be called its "majority, minority faction" contend that the overriding intent of Congress in passing the Civil Rights Act of 1964 was to combat racial discrimination.

In the words of the Commission's first annual report, "The chief thrust of the statute was, of course, aimed at discrimination against the Negro." 41/

The question must be raised at this point whether Title VII's twin objectives of banning race and sex discrimination are compatible. Strong tensions exist between proponents of the two and among the various interest groups which seek to influence the Commission. Although few face the issue squarely, there is the obvious problem that, with the limited staff and resources of the EEOC, efforts devoted to the implementation of the sex discrimination ban detract from the Commission's ability to combat racial discrimination. In even more basic terms, where the Commission is successful in opening up jobs to women, this is likely to draw into the labor force white females who do not now have employment. This, in turn, may mean that jobs which minorities might otherwise obtain are unavailable.

RESPONDENTS UNDER TITLE VII

Title VII requires nondiscrimination in employment on the part of four groups of respondents: employers, unions, employment services (both public and private), and the sponsors of apprenticeship or other job training programs.

The Employer

By far the largest category of respondents under Title VII is employers, accounting for two-thirds of all complaints filed. Even in the absence of complaints, Title VII can have a major impact on employer personnel practices through the so-called "ripple effect" where employers adjust their personnel practices because of, or in anticipation of, decisions by the EEOC. In his 1967 testimony before Congress supporting the cease and desist bill for the EEOC, Secretary of Labor W. Willard Wirtz portrayed the "great majority" of employers as complying voluntarily with Title VII. 42/ But Secretary Wirtz added that,

> . . . there are still a substantial percentage of employers--and some labor unions, and some employment agencies (both public and private)--in which there is subtle, but no less illegal, violation of the equal opportunities principle and law. 43/

Assuming that there has been some improvement in the job status of minorities brought about by employer actions since 1964, it is impossible to ascertain the extent to which this improvement can be attributed to the enactment of Title VII. Many other factors are involved. To what extent, for example, do new educational and job training opportunities, as opposed to the enactment of Title VII, explain recent job improvements registered by minorities? To what extent are these improvements traceable to state and local FEPC activities or to voluntary programs, like Plans for Progress and local merit employment campaigns? A related question involves the extent to which these improvements can be attributed to a general change in opinion as a result of the broad range of civil rights efforts in the post-World War II period. Although these various conditions cannot be factored out, there clearly has been an important change in employer attitudes toward overt job discrimination as a consequence of the enactment of Title VII. The remainder of this discussion of respondents under Title VII is devoted to specific ways in which employers are affected by Title VII.

The EEOC's effect on employers, particularly in race discrimination cases, has been greatest in the South. Here, it can be argued that EEOC procedures have done much to overcome its statutory limitations. The EEOC's implementation of Title VII through the separate investigation-conciliation processes often gives rise to an aura about Title VII out of proportion to its actual potential. When an EEOC representative enters a race discrimination case, he conducts his investigation and then explains that his findings will be reviewed by the Equal Employment Opportunity Commission located in Washington. In some instances, this creates an impression of a distant and powerful enforcement apparatus, especially where the employer lacks knowledge of the law and its penalties. Already busy with other matters, the employer or manager is now faced with the added worry that he will be found in violation of a Federal law and will have to pay the consequences, whatever they may be. Even if the employer hears nothing from the Commission for a long period, which is often the case, he may think twice about maintaining discriminatory personnel policies. If he does, the word is likely to get around in his community and affect others as well.

There is, of course, more to the employer's view of Title VII in the South. Even though the EEOC itself may be weak, the Attorney General's and the complainant's right to sue can be a basis for real concern. There is also evidence that attitudes towards the EEOC in the South are changing. As with any new government program, those affected gradually become more sophisticated about what the government can do to effect implementation. As word gets around that the EEOC takes four to six months to decide on a charge and then all it does if reasonable cause is found is send in a conciliator the Commission is bound to lose some of the first impression effectiveness here attributed to it.

Employers in the North tend to be affected by Title VII in two ways. They may be respondents in, or highly sensitive to, sex discrimination complaints. Or they may find that race discrimination complaints, which in the past were handled perfunctorily by state FEPC's, have acquired a longer life span. Now that Title VII has been enacted, states and the local FEPC's are under more compunction to act because if they do not the EEOC may press for and obtain relief.

It is necessary in this section on the treatment and viewpoint of employers under Title VII to consider specific areas in which EEOC interpretations of the law can have a major effect on personnel practices. Two areas which stand out are testing and seniority.

Testing. Title VII states that it is legal for employers to give and act upon the results of any professionally developed ability test "provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex or national origin." [Section 703(h)] This provision, permitting the use of non-discriminatory employment tests, was added in the Senate by Senator John G. Tower of Texas. The Tower amendment was intended to prevent rulings such as that by an Illinois FEPC examiner in 1964 calling for the abandonment of the general ability test program of the Motorola Company on the grounds that it discriminated against culturally disadvantaged groups. This decision was later over-ruled, but the controversy which it caused was far-reaching. 44/

The EEOC interpreted the language of the Tower amendment as follows in its August 1964 Guidelines on Employment Testing Procedures

> The Commission accordingly interprets "professionally developed ability test" to mean a test which fairly measures the knowledge or skills required by the particular job or class of jobs which the applicant seeks, or which fairly affords the employer a chance to measure the applicant's ability to perform a particular job or class of jobs. 45/

The panel of psychologists on whose report the EEOC testing guidelines were based recommended that employment tests not be relied on exclusively rather that they be part of a mix of testing and other personnel assessment policies.

> We recommend that the Commission advocate the use of a total personnel assessment system toward the attainment of equal employment opportunities for all Americans. The many components of an objective personnel assessment system, i.e., job analysis, development of criterior-related validity, psychological testing, recruitment, screening of applicants, interviewing, and the integration of pertainent personnel data, provide the employer with the basis for matching manpower requirements with human aptitudes and abilities that is most likely to be non-discriminatory within the spirit of the law. 46/

Seniority. As is the case of testing, Title VII states that seniority systems are permitted as long as they are not discriminatory. [Section 703(h)] This issue has proven to be extremely difficult. Seniority systems are the products of lengthy and complex labor-management negotiations. A high degree of expertise is required on the part of the EEOC staff members who deal with complaints of discrimination growing out of the operation of these systems. Prior to the enactment of Title VII, many Negro employees were routinely placed on separate seniority rosters for the lowest paying and least desirable jobs involving limited prospects for advancement. White workers in the same plant were placed on seniority ladders for much better jobs. It is now universally accepted by employers, unions, and others affected that separate white and Negro seniority lists are prohibited under Title VII. The critical question for the EEOC is what must be done to rectify past discrimination as a result of formerly separate seniority lines. Chairman Shulman put this issue in the following terms:

> The issue that we have in this context comes up where you have lines of progression that have historically and traditionally always been white or Negro. They are now no longer white or Negro, but the issue comes up in the way those lines are now connected. One way those lines are connected is to put the Negroes at the bottom of the white line, that means that for promotional purposes, a Negro with twenty years seniority has less seniority than the white with two weeks seniority. 47/

Both the EEOC and the contract compliance agencies have had experience with difficult questions of equity dealing with the integration of seniority lines. Solutions are generally worked out on an ad hoc basis. The most common approach is for minorities to be assigned a certain percentage of their plant seniority in determining their eligibility for new jobs when previously separate seniority lines are merged. White workers bumped down the line as a result are usually "red circled." "Red circled" employees continue to receive their present rate of pay even though they are moved to a lower-rated job. Difficulties arise when specific questions are examined. How much partial credit should minorities be assigned for time spent under discriminatory seniority systems? Will minorities be placed in jobs they do not want or cannot handle? What happens to minority workers who end up in a worse position as a result of the partial credit features of many merger arrangements? Can whites count periods spent as substitutes as the starting date in establishing their seniority rights in a desirable job classification? What jobs are most desirable? How do you rate the desirability of a given job classification?

Several major cases taken to court recently under Title VII involved the Commission's interpretation of Section 703(h) on seniority.

In Quarles v. Phillip Morris, Inc., the United States District Court for the Eastern District of Virginia upheld the EEOC opinion that the mere cessation of discriminatory hiring patterns of segregated departments was not sufficient to constitute compliance with Title VII where a departmental seniority system which had its genesis in racial discrimination was maintained. The court ordered that in such cases special adjustments in seniority would have to be made for all current minority group employees whose seniority was acquired during a period of discrimination. The court issued an order in the Phillip Morris case which contains explicit directions for the integration of seniority systems. While the court rejected "reverse discrimination" as not required by Congress, it added that "Congress did not intend to freeze an entire generation of Negro employees into discriminatory patterns that existed before the act." 48/ Future EEOC conciliation agreements can be expected to borrow from this decision in developing plans for handling cases which involve the remediation of allegedly discriminatory seniority systems.

Labor Unions as Respondents under Title VII

Charges filed against unions accounted for 18 percent of all charges under Title VII in the first eighteen months under the act. Of these, 70 percent were race cases, 20 percent sex cases, and 10 percent national origin cases. The most serious problems of job discrimination involving unions arise in the skilled trades, particularly the construction trades, where unions control the hiring hall and admission into apprenticeship programs. Skilled jobs are the next step up on the job ladder for many members of minority groups and as a result have become a symbol of the success or failure of the drive for fair employment. Craft union resistance to government activities to promote job equality is most prevalent under the Federal Government programs to ban discrimination on government contracts and in apprenticeship programs. These activities are discussed in Chapters 4 and 5 of this report.

As far as EEOC cases are concerned, close working relationships have been established under Title VII between the Commission and the labor movement. On all Title VII complaints against unions over which the EEOC has jurisdiction, the Commission as a routine practice sends a copy of the charge to the national headquarters of the AFL-CIO, the local union involved, and its international. The Director of the AFL-CIO Department of Civil Rights gave the following illustration of how an EEOC-referred case is handled by AFL-CIO unions.

> The EEOC investigator could not get all the information he needed from the local [ironworkers] union. The [AFL-CIO] Civil Rights Department was asked for cooperation. It asked whether the international union had been notified. The answer was no. It then asked the EEOC to make such notification. The international union, when it heard of the complaint, sent a representative to the local. He interviewed the applicants, found they had knowledge of the trade, spoke to the local union officers and found they had no unemployed members. He convinced them to immediately give work permits to the complainants. They went to work at journeyman pay scales and conditions. Within a month they were given an examination by the local union, passed it and were accepted into membership.
>
> There is no question that the cooperation of the international union following its notification had brought a rapid as well as satisfactory solution to this complaint. If the Commission and the complainants had taken any other route, through conciliation or the courts, no more could have been obtained and certainly the men would not have been working or addmitted into membership so quickly. 49/

EEOC officials indicate satisfaction with this arrangement, but note that the processing of charges referred to labor officials are not held up pending their reply. Rather, the Commission proceeds in the usual manner, taking into account any response made or generated by unions at the appropriate point in the investigation or conciliation processes.

Besides the EEOC and the Justice Department, the National Labor Relations Board and the Railway Labor Board have jurisdiction over discriminatory practices by labor unions. Twenty years prior to the enactment of the 1964 Civil Rights Act, the Federal courts in the Steele case ruled that unions recognized under the Railway Labor Act must represent all employees in the unit without discrimination. 50/ The same standard was found to apply under the National Labor Relations Act for the NLRB in the Hughes Tool Co. case in 1964. Herbert Hill described the circumstances in Hughes as follows:

> In this case, involving Negro workers at the Hughes Tool Company in Houston, Texas, all jobs were racially classified and Negro workers held only the lowest paying positions. The union was segregated into white and colored locals and the collective bargaining agreement provided for separate Negro and white seniority lines of promotion. These separate racial seniority lines prevented Negro workers from entering into desirable higher paying job classifications.
>
> During February 1962 the company had posted a bid for apprentice application within the plant. Ivory Davis, a Negro employee since 1942, filed an application for admission into the company sponsored apprenticeship training course. He met all of the qualifications, but the job for which he requested training fell within the category reserved for white workers exclusively, by virtue of the agreement with the white local. He was denied admission into the training program and the union refused to process his grievance. 51/

The outcome in Hughes was a NLRB order that the union be decertified. The union later agreed to end the discriminatory practices involved in order to maintain its bargaining position in the face of competition from other unions which sought to displace it.

Despite the existence of this legal recourse for persons discriminated against by unions, it has been rarely used. Michael Sovern, writing in 1966, cited 14 NLRB and Railway Labor Board cases in which race discrimination was involved. He concluded that "any of the busy state FEPC's receives far more employment complaints from Negroes in one year than all of the courts have received under Steele in over twenty years." 52/

Disuse, however, is not an indication of disinterest. Some civil rights groups, notably the NAACP, see the NLRB as having more effective authority than any other Federal agency. They are hopeful in the future that larger numbers of cases will be taken to the NLRB, but recognize the problems in doing so. For example, it is often necessary in NLRB cases for an aggrieved individual who is already a member of a union to complain against his own union. Other possible reasons for the relative disuse of this recourse are: (1) lack of information within the minority community; (2) a preference for other routes, such as the EEOC and state and local FEPC's; (3) lack of funds and staff for civil rights organizations which could assist members of minority groups to undertake NLRB proceedings; and (4) perhaps also a belief that NLRB processing takes too long.

Other Groups of Respondents

Two other groups of respondents covered under Title VII are employment services (both public and private) and the sponsors of apprenticeship training programs. Together, they accounted for less than 2 percent of the charges filed in the first year of EEOC operations.

Public employment services are covered under both Titles VI and VII of the 1964 Civil Rights Act. Enforcement responsibility is therefore shared by the EEOC and the Labor Department. The Commission received approximately 100 complaints against public employment services in the first year and one half. Because of the relatively small number of complaints and because Commission officials maintain that the Labor Department has a stronger "club" for bringing state employment services into line, the EEOC has made only limited efforts thus far to exercise its jurisdiction over these agencies.

Likewise, the EEOC has made only limited efforts to police apprenticeship programs, which are also under the combined jurisdiction of the EEOC and the Labor Department. Here, too, the number of charges filed with the EEOC has been small. Consideration of the government's role in assuring equal opportunity in both apprenticeship training programs and public employment services is deferred to the chapters which follow on the contract compliance and manpower programs of the Federal Government.

CONCLUSIONS

Although much of the criticism of the EEOC in its first two years of operation centered on its case handling backlog, the evidence suggests that these problems are coming under control. The big issue for the future of the EEOC concerns the nature of its basic role. There are several choices. The EEOC, to date, has operated in much the same manner as its State-local progenitors. Like most State and local FEPC's, it has relied primarily on the case-by-case or reactive approach. The justification has been that this is what the Congress intended (a debatable point) and furthermore that this approach is essential to build a body of law on what Title VII means in actual practice.

Before stating the conclusions of this study on future policy directions for the EEOC, attention should be given to the most important current legislative issue. Cease and desist authority for the EEOC is essential no matter what else is done. The point is not so much that cease and desist authority would be widely used, as that its availability would make it easier to secure compliance and cooperation in every phase of EEOC operations. In these terms, it is regrettable that at a time when civil rights unrest has been increasing, Congress has allowed the relatively uncontroversial EEOC cease and desist bill to languish. Were this measure picked up and successfully pressed by either or both the President and Congress, it could have considerable impact, both as a force for advancing the cause of civil rights and as a symbol of the willingness of the Federal Government to pursue every available avenue for genuine progress in this field.

Three essential principles for the future of the EEOC are: (1) that it should innovate; and (2) that it should broaden further its impact and activities; and (3) that it should use its leverage to the greatest possible advantage. Discrimination today is much more subtle than in the past. Increasingly, the EEOC must handle cases involving institutionalized and highly sophisticated systems for selecting and promoting workers. Their discriminatory character may not appear obvious on the surface. Emphasis must be placed on uncovering such situations in which wholesale results can be achieved through the use of a hearing, Commissioner charge, or technical assistance program designed to deal with corporate or industry-wide personnel patterns and practices.

The Commission's greatest promise for the future lies in what were referred to in this chapter as "self-starting" activities. The EEOC could increase its effectiveness appreciably by moving further away from the case-by-case or reactive approach and giving more emphasis to broader self-starting activities, such as the 1967 and 1968 textile and white collar hearings. Another promising technique for the future is the development of an EEOC-initiated enforcement program. Information now available to the EEOC on its reporting forms could be used to reach out and deal with instances where major employers and unions may be discriminating in employment even though Title VII complaints have not been received.

The greater use of self-starting techniques aimed at discriminatory personnel patterns need not ignore the EEOC's responsibility to treat each individual complaint with care and give it the scrutiny it warrants. Now that nearly two years have passed under Title VII, the Commission's complaint handling process probably can be stepped up still another decibel beyond the reforms made in 1967 and 1968. Some relaxation of the sharp break between investigations and conciliations would appear to be in order on selected cases at the discretion of EEOC regional directors. The effect of this change would be to concentrate EEOC manpower and resources on the most difficult and important situations.

The field research for this study included several States which have their own FEPC's--some strong and some weak. This research suggests that it would be desireable to have the EEOC, assuming Title VII could be amended if necessary, adopt a selective deferral approach. The Commission should not have to defer to States which have limited and ineffective FEP agencies. This could be accomplished in a number of ways.

The EEOC could be empowered to determine which states have sufficiently strong enforcement machinery to handle their own cases or similar authority could be granted to the Attorney General. Another and related approach would be for Congress to set more precise standards than in Title VII by which states would qualify to have jurisdiction over job discrimination complaints within their borders.

Even assuming that further progress can be made in streamlining EEOC complaint handling processes, the new measures suggested here would require additional personnel and funds for the Commission. The agency's present budget is relatively small $6.5 million for fiscal 1968). A 100 percent budget increase, as proposed by President Johnson for fiscal 1969, is by no means unreasonable in terms of: (1) the EEOC's remaining case backlog; (2) the still untapped potential of Title VII; (3) the likely effect of cease and desist authority; (4) the need to speed up the complaint handling system still further in order to increase confidence in the Federal Government's commitment to equal job opportunity; and (5) the possibility of limiting deferrals to state and local FEPC's.

FOOTNOTES TO CHAPTER 2

1/ Title VII is reprinted as Appendix A of this report.

2/ Michael I. Sovern, *Legal Restraints on Racial Discrimination in Employment* (The Twentieth Century Fund, 1966), p. 205.

3/ Duane Lockard, *Toward Equal Opportunity* (The Macmillan Company, 1968), p. 101.

4/ *Equal Employment Opportunity,* Hearings before the Subcommittee on Employment,Manpower, and Poverty of the Senate Committee on Labor and Public Welfare, 90 Cong. 1 sess. (May 4-5, 1967), p. 130.

5/ *Dent v. St. Louis-San Francisco Railway Company et al.,* Defendants, Equal Employment Opportunity Commission, Intervenor, Civ. A., No. 66-65. U. S. District Court N. D. Alabama, March 10, 1967. Emphasis added.

6/ James P. Gannon, "Uphill Bias Fight," *The Wall Street Journal,* May 14, 1967, p. 1.

7/ Both of these interpretations were made in the Senate debate and at the August 1965 White House Conference on Equal Employment Opportunity. See *Report of the White House Conference on Equal Employment Opportunity,* Aug. 19-20, 1965, Washington, D. C.

8/ Address by Stephen N. Shulman to Arkansas Council on Human Relations, Little Rock, Arkansas, Jan. 14, 1967.

9/ Equal Employment Opportunity Commission, Press Release, Wednesday, Jan. 10, 1968, p. 1.

10/ *First Annual Report: Equal Employment Opportunity Commission,* H. Doc. 86, 90 Cong. 1 sess. (1967), p. 5.

11/ The conciliation process is discussed in the major section which follows on the work of the Washington staff of the EEOC. See pp. 22-28.

12/ Information on state practices from Professor Duane Lockard of Princeton University. See his book, *op. cit*.

13/ Sovern, *op. cit*., p. 83.

14/ *Annual Report,* EEOC, 1965-66, *op. cit*., p. 17. Emphasis added.

15/ Donald D. Osborn, "Negro Employment in the Textile Industries of North and South Carolina," Report submitted to the Equal Employment Opportunity Commission, Nov. 21, 1966.

16/ Statement of Stephen N. Shulman, Chairman, Equal Employment Opportunity Commission, in "Summary of the Record of the Forum," Feb. 24, 1967, pp. vi-vii.

17/ Address by Clifford L. Alexander, Jr., Chairman of EEOC, Drug Industry Meeting, Oct. 6, 1967, p. 1.

18/ EEOC Research Report 1967-20, "Employment Patterns in the Drug Industry 1966," Sept. 29, 1967.

19/ Address by James L. Goddard, Commissioner for Food and Drugs, Drug Industry Meeting, Oct. 6, 1967, p. 1.

20/ Equal Employment Opportunity Commission, Press Release, Oct. 27, 1967, p. 1.

21/ *Ibid.*

22/ Equal Employment Opportunity Commission, Press Release, Jan. 15, 1968, p. 2.

23/ *Ibid.*

24/ See pp. 46-47.

25/ James P. Gannon, *The Wall Street Journal*, Apr. 12, 1967.

26/ This system produces printouts on all EEOC reasonable cause decisions and conciliation agreements. Because of Title VII confidentiality requirements, these printouts are "sanitized," that is, all identifying information is excluded. Public disclosure of the contents of a charge and the results of an investigation is only permitted prior to the institution of court proceedings.

27/ Some conciliation agreements which are considered routine are not even submitted to the Commission. They are approved instead by the EEOC's chief of conciliations.

28/ "Guidelines for Conciliation," EEOC Memorandum, Nov. 15, 1965, pp. 6-7.

29/ *Equal Employment Opportunity*, Hearings, p. 58.

30/ *EEOC Newsletter*, May-June 1966, p. 1.

31/ *Report of the Office of Conciliations*, 1965-67, pp. 8-13, 15, 18, 25, 29, and 44.

32/ NAACP Legal Defense and Educational Fund, Inc., "Report 66," 1967, p. 10.

33/ Interview, Nov. 15, 1967.

34/ Statement of Whitney M. Young, Jr., Executive Director, National Urban League, in Equal Employment Opportunity, Hearing, pp. 4-5.

35/ Interview, March 30, 1967.

36/ Commerce Clearing House, Inc., Civil Rights Act of 1964 (1964), p. 74.

37/ Letter from Chairman of the Board, President, and Secretary-Treasurer of the National Organization of Women to President Lyndon B. Johnson, Nov. 11, 1966.

38/ Testimony of Stephen N. Shulman, Chairman, Equal Employment Opportunity Commission, in EEOC Appropriations for 1968, Hearings before a Subcommittee of the House Committee on Appropriations, 90 Cong. 1 sess (1967), p. 177.

39/ Federal Register, Vol. 33, No. 38, Feb. 24, 1968, p. 3344.

40/ Equal Employment Opportunity Commission, Press Release, Feb. 23, 1968, pp. 1-3.

41/ H. Doc. 86, p. 5.

42/ Statement of W. Willard Wirtz, Secretary of Labor, in Equal Employment Opportunity, Hearing, March 4, 1967, Prepared statement, p. 6.

43/ Ibid.

44/ Despite the Tower amendment, there are civil rights proponents who argue, and with considerable supportive evidence, that for many lower level jobs testing ought not to be permitted at all because of the opportunity it provides for discriminatory personnel practices. Robert L. Carter, General Counsel of the NAACP,contends that generalized testing is not valid and that testing should be permitted only for specific job skills.

45/ Equal Employment Opportunity Commission, Guidelines on Employment and Testing Procedures (1966), p. 2.

46/ Ibid., p. 3.

47/ Plans for Progress, A Report on the 1967 Plans for Progress Fifth National Conference, Jan. 23-27, 1967, Washington, D. C., p. 81.

48/ Douglas Quarles et al., Plaintiffs v. Philip Morris, Inc., et al., Defendants. U. S. District Court, Virginia, Richmond Division, Civil No. 4544, Jan. 4, 1967.

49/ Donald Slaiman, "Labor's Role: Democracy on the Job," The American Federationist November 1966, Vol. 73, No. 11, p. 12.

50/ Steele v. Louisville, 1944, 323 U. S. at 198.

51/ Herbert Hill, "The Role of Law in Securing Equal Employment Opportunity: Legal Powers and Social Change," Boston College Industrial and Commercial Law Review, Spring 1966, Vol. VII, No. 3, p. 647.

52/ Sovern, op. cit., p. 155.

Chapter 3

THE ROLE OF THE ATTORNEY GENERAL UNDER TITLE VII

Under the House-passed version of Title VII, the Equal Employment Opportunity Commission (EEOC), as in the case of most state FEPC's, was granted the power to bring court actions to bar discriminatory job practices. This authority was stricken in the Senate in a step which the Legislative Reference Service of the Library of Congress termed "the most important change" in the House bill. 1/ In place of this authority, the Attorney General was authorized to bring suit on referral of cases from the Commission or on his own volition "whenever he has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of the rights secured by this title [Section 707(a)]." Aggrieved individuals are also authorized under Section 706 of the statute to bring suit in Federal court for the enforcement of Title VII after notification from the EEOC that it has failed to achieve voluntary compliance. 2/ The Attorney General is empowered to intervene or participate amicus curiae in private suits under Title VII "if he certifies that the case is of general public importance." 3/

Before describing the role and procedures of the Attorney General under Section 707, it is useful to review the history of private litigation under Section 706. There is no systematic compilation of the cases brought under this section. Records maintained by the General Counsel's office of the EEOC indicate that 56 private suits had been

During the first eighteen months under Title VII, the Attorney General, to use Sovern's terms, clearly did not pursue a policy of "vigorous enforcement." As of the end of 1967, the Attorney General had filed ten cases under Section 707. 9/ Of the ten cases, five had been referred by the EEOC. Altogether, the EEOC had sent 40 cases to the Attorney General as of December 31, 1967. Seventeen of these were referred prior to January 1, 1967. The bulk of the cases referred after January 1, 1967 grew out of the Commission's textile forum in January 1967. 10/

Both in and out of government, there was criticism of the Justice Department for not moving fast enough at the outset under Section 707. At the 1967 hearings on the bill to give cease and desist authority to the EEOC, Roy Wilkins, Executive Director of the NAACP, recommended that Title VII be amended to allow the EEOC to handle its own litigation, "at least to the level of the Courts of Appeals." 11/ Wilkins cited as the reason "the extremely selective and limited use" the Justice Department has made of its authority under existing law. He noted that "most Federal regulatory agencies handle litigation of their own cases." 12/

TABLE 3-1

Cases Filed Under Title VII of Civil Rights Act of 1964

Date	Defendant(s)	Place Filed	Issue(s)	EEOC Originated
2/4/66	1. Building & Construction Trades Council of St. Louis AFL-CIO 2. Pipefitters Local 562 3. Sheet Metal Workers Local 36 4. International Brotherhood of Electrical Workers Local 1 5. Journeymen Plumbers' Local 35 6. Laborers' Local 42	St. Louis, Missouri	Racial discrimination: union membership & hiring (federal contract)	
12/15/66	International Association of Heat and Frost Insulators and Asbestos Workers Local 53	New Orleans, La.	Racial discrimination: union membership & job referral	X
2/27/67	Dillon Supply Company (Industrial Equipment Servicing) Raleigh, North Carolina	Raleigh, N. Carolina	Racial discrimination: job advancement and plant facilities	X
4/14/67	International Brotherhood of Electrical Workers Local 683 and Electrical Joint Apprenticeship and Training Committee	Columbus, Ohio	Racial discrimination: union membership	
6/23/67	H. K. Porter Company, Inc. (Steel Mill & Plant) Birmingham, Alabama; United Steelworkers of America, AFL-CIO; and Local 2250 of the Steelworkers	Birmingham, Alabama	Racial discrimination: job classification & advancement	X
7/24/67	International Brotherhood of Electrical Workers Local 212 and Cincinnati Electrical Joint Apprenticeship and Training Committee	Cincinnati, Ohio	Racial discrimination job hiring & referral	X

7/24/67	1. St. Louis-San Francisco Railway Company 2. Brotherhood of Railroad Trainmen	St. Louis, Missouri	Racial discrimination: job classification and advancement	X
8/8/67	1. International Brotherhood of Electrical Workers Local 38 2. Electrical Joint Apprenticeship and Training Committee of the Greater Cleveland Chapter of the National Electrical Contractors Association, Inc.	Cleveland, Ohio	Racial discrimination: union membership, job referral, collective agreements	
12/6/67	Bethlehem Steel Corporation (Lackawanna, New York plant, near Buffalo) and Locals 2601, 2602, 2603, 2604, and 3144 of the United Steelworkers of America	Buffalo, New York	Racial discrimination: recruiting, hiring, referring, advancing, transferring and assigning employees	
12/7/67	International Association of Bridge, Structural and Ornamental Ironworkers Locals 44 & 372 (also joint apprenticeship committee for each local)	Cincinnati, Ohio	Racial discrimination: recruiting and acceptance of apprentices	

Source: U. S. Department of Justice, Civil Rights Division.

Although nothing has been said publicly, there is evidence that the EEOC, too, was unhappy with the Justice Department for not having proceeded more rapidly under Section 707. A Wall Street Journal article on the EEOC in April 1967 quoted "private" comments by EEOC officials critical of what the article referred to as the Justice Department's "unhurried and limited response to EEOC recommendations." 13/

> There's a feeling on the staff level that if a complaint involves General Motors, U. S. Steel or a company of that stature, with access to the White House, then Justice will back off. (No suit against such a company has been recommended by the Commission however.) Another EEOC official, noting that the lone suit was brought against a small company, contends it's unlikely such a suit would be filed against an important government supplier; that the claims would 'embarrass' the Labor Department's Office of Federal Contract Compliance. 14/

THE CIVIL RIGHTS DIVISION UNDER TITLE VII

The Civil Rights Division is one of seven major divisions of the Justice Department. Its fiscal 1967 budget was $2.5 million. This is less than 1 percent of the Justice Department's total budget and 40 percent as large as the budget for the EEOC. The Division employed 190 people, including 87 lawyers, in fiscal 1967. 15/

Until the passage of the Civil Rights Act of 1964, the Civil Rights Division had been organized along functional lines (e.g., trials, appeals, research). With the passage of the 1964 Act, this assignment system was found no longer feasible. The Division was reorganized along geographic lines into four areas--eastern, western, southeastern, and southwestern. The majority of the Division's legal staff, though based in Washington, was assigned to the two southern areas. Additional changes were made in September 1967 when a larger proportion of the Division's staff was assigned to the northern and western regions.

The Civil Rights Division has jurisdiction in eight principal areas: (1) voting; (2) school desegregation litigation; (3) enforcement of Title II of the Civil Rights Act of 1964 prohibiting segregation in public accommodations; (4) enforcement of Title III barring segregated public facilities; (5) civil rights cases involving criminal law enforcement; (6) employment cases under Title VII; (7) coordination of the implementation of Title VI by federal agencies; and (8) enforcement of the fair housing provisions of the Civil Rights Act of 1968.

From mid-1965 through 1967, the Civil Rights Division, by its own statements, accorded lowest priority to employment cases. The Attorney General's 1966 Annual Report stated,

> The commitments by the Division with respect to the enforcement of statutes covering voting, schools, juries and rights intimidation precluded a broader scope of activity in the field of equal employment opportunity during the year [fiscal 1966]. 16/

Top civil rights priority in this period was assigned to voting, in large measure because President Johnson instructed the Department to move with special urgency on the 1965 Voting Rights Act. The 1965 Act authorizes the appointment of Federal examiners to list voters in areas where discriminatory tests and devices are used in violation of this and preceding Federal laws on voting rights. Next in order of priority were school desegregation cases, and then criminal law enforcement cases involving civil rights.

A major shift in these priorities began to emerge early in 1967. John Doar, former Assistant Attorney General for Civil Rights, said at the House hearings on the Justice Department appropriations for fiscal 1968, that the Civil Rights Division was in the process of adjusting its priorities as between voting and employment cases.

> I would say with respect to the trend, the trend in our work is moving from voting to employment, and that the results of the 1965 Voting Rights Act have demonstrated a remarkable amount of compliance by local officials, and registration of Negro citizens in the area covered by the act increased to just over 50 percent, approximately. We do not have very many voting complaints any more. We are getting more and more employment complaints. 17/

Then, in August 1967, Attorney General Ramsey Clark assigned what he referred to as "the highest priority" to the enforcement of Title VII. 18/ His announcement was interpreted in the press as "switching the emphasis of its [the Justice Department's] civil rights enforcement to equal job opportunities and away from school integration and voting rights." 19/ Later, on December 26, 1967, the administration announced a two-part "stepping up [of] its attack on racial discrimination." 20/ Part one was aimed at school inequalities and part two at job discrimination. Listing the ten suits filed under Title VII, the story in the Washington Post said,

> With these and many more suits yet to be filed, the Justice Department aims to build a body of case law that will bring about voluntary compliance. 21/

In explanation of its previous policy of attaching relatively lower priority to employment discrimination, Justice Department officials make several points. First, they maintain that during this period (1965-67) other types of cases were considered more pressing, especially voting cases where the Justice Department alone is responsible for enforcement. Department officials further point out that Title VII refers to discriminatory acts which took place after July 2, 1965, thus a period of time had to elapse before the Department pressed on litigation. This, it is held, is the usual practice when new federal regulatory responsibilities are established.

liberal than those of the Department of Justice. Thus, the Commission tends to find reasonable cause in borderline cases where the Justice Department would consider the evidence insufficient. Reflecting these differences on standards of proof, a number of the cases referred to the Attorney General by the EEOC have been returned to the Commission because the Civil Rights Division considered the supportive evidence inadequate. Again, the question of whether and when the EEOC will be granted cease and desist power makes a major difference. If the Commission is granted cease and desist power, it is likely to tighten up its investigative procedures. Where conciliation fails, the Commission would then be in a position to direct that the discriminatory practices found by its investigators be discontinued, thus requiring more information and greater detail than is presently needed for EEOC purposes.

CONCLUSION

Should the EEOC be granted the power to issue court enforceable orders, this would enable the Commission to carry its own cases further and would significantly alter relationships between the Justice Department and the Commission. While it is difficult to predict the direction of this change, there is a basic point raised by the discussion in this chapter on the role of the Justice Department in the field of equal employment opportunity which forms an effective bridge between the first two substantive chapters of this report and the three chapters which follow. Although there are ways for expediting enforcement of Title VII on the part of both the Justice Department and the EEOC, case-by-case implementation of a national policy is bound to be a slow and difficult process. The findings for the EEOC in Chapter 2 indicate that what is needed most are broader strategies to achieve equal employment opportunity. All three of the remaining chapters build upon this point. They cover (1) the efforts of the government under Federal contracts to bring about affirmative actions by employers to provide more and better job opportunities for minorities; (2) the relationship of manpower service programs to the Federal Government's total effort to combat job inequality; and (3) the way in which all of the government's various programs and activities in the field of equal employment opportunity can and should be linked with one another.

FOOTNOTES TO CHAPTER 3

1/ Equal Employment Opportunity, Hearings before a subcommittee of the House Committee on Education and Labor, 89 Cong. 1 sess.(1965), p. 118.

2/ The time periods controlling the instigation of private suits require litigant to allow 60 or 120 days for the appropriate state or local FEPC's to act and another 60 days for the EEOC to act. As a practical matter, however, the EEOC has allowed state FEPC's additional time when they request it and assuming that the charging party does not object. Under the law, the individual has 30 days to file suit following notification from the EEOC that it has been unable to obtain voluntary compliance, although here too the courts and the Commission have been flexible.

3/ The difference between entering a judicial proceeding amicus curiae and intervening directly concerns the extent of control one gains when he intervenes. In either case the permission of the court is necessary and therefore the moving party must be able to demonstrate his interest in the litigation.

An amicus is a person, attorney or layman, who interposes in a judicial proceeding to assist the court by giving information or who conducts an investigation or other proceeding on request or appointment by the court.

Intervention is the admission by leave of the court of a person not an original party to the pending legal proceeding. Such person then becomes a party to the case for the protection of some right or interest alleged by him to be affected by the proceedings of the court.

As of March 11, 1968, the Department of Justice had represented the Commission by intervening in seven cases, and the Department itself had participated as amicus in one.

4/ Statement by Jack Greenberg. Equal Employment Opportunity, Hearings before a subcommittee of the Senate Committee on Labor and Public Welfare, 90 Cong. 1 sess. (1967), p. 108.

5/ Six cases are said to have been settled out of court as of March 1967. New York Times, March 5, 1967, p. 12.

6/ Greenberg, p. 109.

7/ Ibid., p. 3.

8/ Michael I. Sovern, Legal Restraints on Racial Discrimination in Employment (Twentieth Century Fund, 1966), p. 80.

9/ The end of 1967 marks a turning point. As discussed below in the section on the Civil Rights Division of the Justice Department, the Attorney General in late 1967 announced a stepping up in the rate of job discrimination cases. In the first five months of 1968, more cases were filed under Title VII than in the eighteen months preceding. Over thirty cases had been filed as of the date of final submission of this report.

10/ The twenty textile case referrals by the EEOC were made on the basis of EEO-1 reporting form data without investigation by the Commission. As of June 1968, the Attorney General had decided not to proceed under Section 707 in eleven of these cases. These cases were returned to the EEOC.

11/ Equal Employment Opportunity, Hearings before a subcommitee of the Senate Committee on Labor and Public Welfare, 90 Cong. 1 sess. (1967), p. 115.

12/ Ibid., p. 127.

13/ James P. Gannon, Wall Street Journal, April 12, 1967.

14/ Ibid. The one small company referred to here as having been the subject of a Title VII suit is the Dillon Supply Company of Raleigh, North Carolina (See Table 3-1).

15/ Departments of State, Justice, and Commerce, The Judiciary and Related Agencies Appropriations for 1968, Hearings before a subcommittee of the House Committee on Appropriations, 90 Cong. 1 sess. (1967), p. 365.

16/ Department of Justice, Annual Report of the Attorney General of the United States (1966), pp. 184-85.

17/ Departments of State, Justice, and Commerce, The Judiciary and Related Agencies Appropriations for 1968, Hearings, p. 368.

18/ Wall Street Journal, Aug. 27, 1967, p. 1.

19/ Ibid.

20/ Washington Post, Dec. 26, 1967, p. A-2.

21/ Ibid., p. A-2.

22/ Congressional Record, Vol. 110, Pt. 11, 89 Cong. 1 sess., June 1965, p. 14270.

23/ Congressional Record, Vol. 110, Pt. 11, 89 Cong. 1 sess., June 1965, p. 15895.

Chapter 4

THE CONTRACT COMPLIANCE MACHINERY

Executive Order 11246, issued by President Johnson September 24, 1965, 1/ prohibits discrimination on the part of all employers with Federal contracts. 2/ The order also requires that Federal contractors take affirmative action "to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, or national origin." 3/

The machinery for implementing Executive Order 11246 is widely dispersed and little known even within the Federal Government. It cuts horizontally across the entire Federal establishment. Altogether the Federal Government in March 1967 employed 228 full-time equal employment specialists for Federal contracts and 40 specialists on a greater than half-time basis. 4/ These submerged emissaries for equal employment are not unlike thousands of other Federal bureaucrats working for causes to which they are personally, as well as professionally, committed. But what makes the contract compliance specialist's job stand out is that he is designated to achieve a policy objective which frequently conflicts with the basic function or functions of the agency by which he is employed. A procurement office in the Department of Defense, for example, is measured by its ability to deliver the goods. Actions by the Department's equal employment specialists involving threats to delay or cancel a particular contract are often seen by procurement officers as simply another barrier to the delivery of a needed defense component. The resulting pulling and hauling within the agency to have contract administrators take into account what they are likely to regard as quite separate, lower-order policy objectives can be a frustrating process for the contract compliance specialist. How this job is done, or to put the question more sharply, whether it can be done under the existing administrative system, is the subject of this chapter.

Chapter 4 traces out the policy implementation process for Executive Order 11246 in much the same way that this was done for Title VII of the Civil Rights Act of 1964 in Chapter 2. First, the content and scope of the order are described. The chapter then discusses the coordinating and supervisory functions of the Office of Federal Contract Compliance (OFCC) in the U.S. Department of Labor; the role of the various contracting agencies; the activities of contract compliance specialists working in the field; and finally the viewpoint and treatment of the two major clientele groups, employers and leaders in the civil rights community.

CONTENT AND SCOPE OF EXECUTIVE ORDER 11246

Executive Order 11246 is the sixth in a series of equal employment orders for Federal contractors dating back to 1941. The first such order (Executive Order 8802) was issued by President Roosevelt June 25, 1941. It was issued "following the threat of a Negro march on Washington which would have revealed to the world a divided country at a time when unity was necessary."5/ Both this order and its successor (Executive Order 9346 issued in May 1943) engendered strong congressional opposition led by Senator Richard B. Russell of Georgia. He objected to the fact that the government's Committee on Fair Employment Practices for defense industries under these two orders had never received an appropriation from Congress. It was financed instead out of presidential contingency funds. Growing out of this opposition, the Russell amendment, which passed the Congress on June 27, 1944, required congressional approval of all funds for agencies established by Executive order in existence for more than one year. Although Congress made two appropriations for President Roosevelt's defense industries' fair employment committee, the second in July 1945 was specifically earmarked for "liquidating its affairs." 6/

There followed a six-year lull until December of 1951 when President Truman issued Executive Order 10308 establishing the Committee on Government Contract Compliance. The Truman order expired January 1953. Eight months later in August 1953, President Eisenhower issued Executive Order 10479 establishing the President's Committee on Government Contracts chaired by the Vice President. This order continued in effect throughout the eight years of the Eisenhower Administration.

President Kennedy retained the Eisenhower administrative arrangement under the Vice President, but broadened the authority and coverage of the contract compliance program in the two orders which he issued in this area. 7/ Executive Order 10925, issued March 7, 1961, was President Kennedy's first official civil rights act and reflected a heavy reliance on executive action. This order for the first time set out strong and highly specific penalties for noncompliance. Kennedy's second order, Executive Order 11114, extended equal job protection to federally aided construction projects.

Although President Johnson in Executive Order 11246 retained the Kennedy policy changes, he changed the administrative structure of the compliance program. He took this responsibility away from the Vice President and assigned it instead to the Secretary of Labor. In part, this was a response to congressional opposition led by Senator Willis Robertson of Virginia. As in the case of the Russell amendment of 1944, Robertson's opposition was focused on the financing of the inter-agency committees headed by the Vice President under Eisenhower and Kennedy. Specifically, Robertson opposed having the committee funded by contributions from the various participating agencies rather than from an appropriation by the Congress as must be provided for the Labor Department under Executive Order 11246.

Two Major Contractor Obligations

Executive Order 11246 places two major obligations on government contractors unless exempted by the Secretary of Labor. The first is that contractors not discriminate on the basis of race, creed, color, sex, or national origin. The second goes beyond the passive obligation that they not discriminate and requires that they take affirmative action as well. Both commitments apply to all of the contractor's operations, not just those for the contracted item and are specifically incorporated in the terms of the contract between the government and the contractor. The contractor is also required under the order to:

1. State in all job advertising that he is an equal employment opportunity employer;
2. Give appropriate notice to the unions with whom he has contracts;

3. Comply with all orders of the Secretary of Labor, including requirements for information and records and the inspection of books; and

4. Make reference to these commitments in all subcontracts and purchase orders "so that such provisions shall be binding on each subcontractor or vendor." [Section 202(7).]

Administrative Structure

Executive Order 11246 states that "each contracting agency shall be primarily responsible for obtaining compliance." [Section 205.] It stipulates that the activities of contracting agencies are to be supervised and coordinated by the Secretary of Labor. The OFCC (Office of Federal Contract Compliance) was established in the Labor Department in January 1966 for this purpose. One of its main tasks is to assign Federal agency responsibility for individual contractors. Since the beginning of the contract program, it has been felt that it would be inefficient to have each contracting agency administer the order separately for every contractor with which it does business. Many contractors do business with several government agencies, often on the same item.

Compliance agencies are ordinarily assigned on the basis of the dollar volume of business. The agency which does the largest dollar volume of business with a given company is assigned responsibility for enforcing the order for that company as a whole. Within each of the major contracting agencies, there is staff assigned full-time to the implementation of Executive Order 11246. The organization of compliance programs varies from agency to agency.

Sanctions and Penalties

Part II of Executive Order 11246 details sanctions and penalties which can be applied by the Secretary of Labor or the contracting agency against employers who fail to comply with the order. The contrast between the sanctions and penalties available to the EEOC under Title VII of the Civil Rights Act of 1964 and those provided in Executive Order 11246 could not be sharper. The only direct remedies available to the EEOC are "informal methods of conference, conciliation, and persuasion." The Executive order, on the other hand, provides far-reaching sanctions and penalties. Section 209 allows either the Secretary of Labor or the contracting agencies to "cancel, terminate, [or] suspend . . . any contract or portion thereof." In addition, it provides procedures to debar ("blacklist") a contractor from entering into future contracts with the Federal Government.

The most widely cited fact about the implementation of the contract compliance program, both in government and out, is that no contract has ever been concelled or terminated as provided under Section 209. Some contracts, notably in the construction industry, have been delayed under procedures described below. The power to debar contractors was used by the old President's Committee under both Eisenhower and Kennedy and has been used and threatened since then, although sparingly. The fact that the sanctions and penalties provided in Executive Order 11246 have been used so infrequently tends to undermine the credibility of the contract compliance program and thus reduce its effectiveness.

Writing in the Fall 1965 issue of Daedalus, Harold C. Fleming of the Potomac Institute contended that effective administration of the contract compliance program requires "steady insistence on the employer's obligation through the channels of contract management, including the use of sanctions when necessary, and strong and continuing backing for this approach from high officials in the administration." 9/ He observed that neither of these elements was present in 1965.

> It is undeniable . . . that the enforcement provisions of the order have gone virtually unused. The ultimate sanction--contract termination--has never been applied, no hearings have been held, and only a few companies have been put on the list of ineligibles for future contracts pending improved performance. 10/

Although there have been important policy innovations and administrative changes since Fleming wrote in mid-1965, the major thrust of the contract compliance program throughout its history has been to advise and counsel contractors to initiate affirmative actions on an essentially voluntary basis. The concept of affirmative action is basic to the way in which Executive Order 11246 is currently administered by the Labor Department and the various contracting agencies.

Affirmative Action

Executive Order 11246 states that affirmative action "shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship." [Section 202(1)] The order does not define what is actually required of contractors in these areas. Subsequent materials on the order issued by the Department of Labor have likewise avoided explicit definition of what is required in the way of affirmative action. In a statement in January 1967, Edward C. Sylvester, Jr., director of the Office of Contract Compliance, defined affirmative action, not in terms of what has to be done, but rather in terms of the results of what is done. 11/

> I don't pretend to have a definition of affirmative action that is going to satisfy everybody here, particularly when viewed in light of your special situation. Affirmative action is going to vary from time to time, from day to day, from place to place, from escalation to escalation. It depends upon the nature of the area in which you are located, it depends upon the kinds of people who are there, it depends upon the kind of business that you have. There is no fixed and firm definition of affirmative action. I would say that in a general way, affirmative action is anything that you have to do to get results. But this does not necessarily include preferential treatment. The key word here is "results."
>
> Affirmative action is really designed to get employers to apply the same kind of imagination and ingenuity that they apply to any other phase of their operation. When there is a breakdown, or when something goes wrong in production, it is known fairly quickly and something is done about it in fairly short order. We expect the same kind of attention and the same kind of focus of interest at all levels on the matter of equal employment opportunity as an integral and important part of a government contract. 12/

The government's unwillingness to define precisely how an employer's obligation to take affirmative action can be satisfied has been deliberate. The Federal contractor is seen as having incurred an ongoing responsibility of leadership in his community. This involves steps to eliminate or revise personnel policies which may discriminate unconsciously against the members of minority groups as well as positive measures which move the employer forward in providing more and better jobs for minorities.

Put another way, affirmative action requires more than "the simple colorblind approach of nondiscrimination, acceptable only a few years ago." 13/ Contractors in areas where there are substantial percentages of minority groups must now prove that they are working actively to integrate their labor force and provide more jobs for minorities. The following excerpt from the Employer's Guide to Equal Opportunity published by the Potomac Institute summarizes the rationale of this approach.

> Employment patterns and practices affecting minority groups are usually less the product of conscious direction than of the very human tendency to avoid sticky decisions where possible. Omission, rather than commission, has been the problem. If a successful new pattern of genuine equality of opportunity is to be created, much of this unplanned undergrowth of policy must be consciously and vigorously cleared away . . . .
>
> The key to productive action by management lies in taking an initiating stance. Equality of opportunity and improving the job status of minority members must be presented as significant management goals. No specific formula is suggested here because management must be free to innovate and to tailor its program to its own situation and needs. 14/

Although top officials of the OFCC and most major contracting agencies shy away from giving examples of acceptable affirmative actions, some agencies have included illustrative affirmative action steps in their manuals and instructions to contractors. An August 1964 Navy Department guide stated:

> Affirmative action in a given situation could take the form of initiation of, or active participation in a project seeking the reduction of school drop-outs, or the retraining and reemployment of technology-displaced persons in the minority group community; establishing continuing contracts in educational institutions having total or substantial minority group enrollments which offer employment to qualified graduates; or arranging for off-or-on-plant site training of minority group persons, with a view toward employment after successful completion of training. 15/

The Department of Housing and Urban Development, in instructions for contractors issued in August 1967, offered the following "suggested steps:"

1. Recruiting through schools and colleges having substantial proportions of minority students;

2. Maintaining systematic contacts with minority and human relations organizations, leaders, and spokesmen to encourage referral of qualified minority applicants (including those in related work such as fabricating shops and home repair) and minority youths interested in construction occupations;

3. Encouraging present employees to refer minority applicants;

4. Making it known to all recruitment sources that qualified minority members are being sought for consideration for supervisory, journeyman, office, and technical jobs as well as others, whenever the company hires.

5. Where union agreements exist --
   a. cooperating with your unions (perhaps through your contractors' organization) in the development of programs to assure qualified minority persons --including apprentices -- of equal opportunity for employment in the construction trades.
   b. including an effective non-discrimination clause in new or renegotiated union agreements;

6. Sponsoring and assisting minority youths as well as others to enter pre-apprentice and apprentice training, and making such training available to the maximum extent within your company;

7. Actively encouraging minority employees as well as others to increase their skills and job potential through participation in training and education programs, and helping to assure that such programs are adequate and are in fact available to minority persons;

8. Working with civic, labor, and contractors' organizations (helping to organize a sponsoring group if necessary) to conduct an open-admission training resource for the construction trades in your area;

9. Distributing written questionnaires to all lower-paid employees, inquiring as to their interest and skills with respect to any of the higher-paid trades, followed by assistance, counseling, and effective measures to enable employees with interest and potential to qualify themselves for such trades;

10. Encouraging minority-group subcontractors, and subcontractors with minority representation among their employees, to bid for subcontracting work;

11. Counseling and assisting minority craftsmen who have the interest and potential to become subcontractors, with respect to securing performance bonds, writing contracts, and making bids. 16/

In practice, the concept of affirmative action for government contractors comes very close to embodying, if it does not actually do so, two principles in the field of civil rights which have long been resisted -- quotas and preferential treatment. The two are closely related. Contract compliance officials insist that there are no quotas. The usual procedure is to set as a goal -- either explicitly or implicitly -- that minority groups be "fairly represented" in relation to their proportion of the total labor force in the community. If an employer has fewer minority group workers than the contract compliance specialist judges to be "fair representation," he is likely to press that employer harder on affirmative actions than he would an employer who has what he considers a satisfactory minority group employment record. In effect, the compliance specialist often applies a form of subjective quota in deciding how hard to push a given contractor on the fulfillment of his equal employment commitment.

The employer who is singled out and pressed to take more aggressive affirmative actions because his record of results is not judged to be satisfactory may ask: Does this mean I must select the less qualified man because he is a Negro as between two applicants in order to comply with the executive order? Although this question rarely arises in such simplistic terms, the dilemma it poses can be hard to handle for those charged with administering the Executive order on government contracts. The Civil Rights Act of 1964 is clear. Title VII contains a specific prohibition against requirements under the law for giving "preferential treatment to any individual . . . on account of any imbalance which may exist with respect to the total number of or percentage of persons of any race, color, religion, sex or national origin employed by an employer." [Section 703(j)]. This prohibition, however, was not carried over into the Executive order for Federal contractors issued a year later. Nor is there any government regulation or statement which resolves this issue as far as the order is concerned. Compliance officials do everything they can to avoid directly facing questions involving preferences. The usual response when confronted with this issue is to fall back on the standard semantics that compliance is not so much a matter of set requirements as it is a matter of taking affirmative actions which produce results.

Perhaps this haziness about objectives under the Executive order should be regarded as an example of political pragmatism in action. The current approach may enable the government to go further than the Congress and public opinion would allow if its goals in this area had to be made more explicit. But there are those on the other side who maintain that the government must be more precise about its objectives if the effort to provide equal job opportunity under Federal contracts is to succeed. For example, Robert L. Carter, General Counsel of the NAACP, contends that civil rights leaders have allowed themselves to be "outfoxed" by accepting the present unfavorable connotation of the word, preference. 17/ Preferences, according to Carter, are only possible when there is equality to begin with. He maintains that, where instances of unequal treatment in the past are involved, favoring minorities in the present under government contracts is not preference, only fairness.

Carter argues that it is necessary to face this issue directly and not allow what he characterizes as emotional reactions to the term preference to stand in the way of action that should be taken.

Unions and the Executive Order

The treatment of labor unions under Executive Order 11246 is significantly different from that under Title VII of the 1964 Civil Rights Act. Unions are subject to the same authority and procedures as employers under Title VII. Under the Executive order, unions are covered only indirectly. The obligation to comply runs to the contractor. It is his responsibility to secure compliance from the labor unions with which he has contracts. The director of the OFCC said in early 1967,

> I have to be very clear about this -- as far as we're concerned [the relationship] is between the government and employer/contractor. Now, if he has a collective bargaining agreement or if he's got an arrangement with the union that in itself is discriminatory, then so far as we're concerned, that contractor has got a very serious problem, and we expect him to solve that problem with the union. 18/

This approach for securing labor union compliance has obvious limitations. If a union simply refuses to cooperate, it puts the government in an awkward position. This is particularly true of the construction industry, in which problems of union resistance to equal job opportunity are most severe.

The government can, of course, proceed independently against unions which discriminate under Title VII. The Secretary of Labor is directed under Executive Order 11246 to notify the EEOC or the Department of Justice whenever he has reason to believe that the practices of a given union violate Title VII of the Civil Rights Act of 1964. The number of

Title VII cases against unions growing out of violations of Executive Order 11246 nevertheless has been small. The most important was the St. Louis commemorative arch case. In this case, the Attorney General filed suit under both Executive Order 11246 and Title VII against the Building and Construction Trades Council of St. Louis and local unions of the pipefitters, sheet metal workers, electricians, plumbers, and laborers. Under the Executive order, the defendants were charged with impeding affirmative actions agreed to by the contractor for the St. Louis commemorative arch. In July 1966 the Federal district court for the eastern district of Missouri dismissed the government's claim of "tortious interference" with Executive Order 11246 but sustained the allegation of violation of Title VII. 19/

While the possibility of successful court enforcement does exist, there is considerable sentiment among those familiar with Federal Government contract compliance activities that the present sanctions under Executive Order 11246 are insufficient for dealing with recalcitrant labor unions. 20/ The intriguing question is, assuming they are right, what should be done to remedy this defect?

The Order and Federal Grants-in-Aid

President Kennedy's second contract order (Executive Order 11114) set an important precedent by extending the coverage of the compliance program to Federal grants-in-aid for construction. This was the first time that federally aided activities were covered under an equal job order. Executive Order 11246 retained the Kennedy provisions for grants-in-aid for construction. Under its provisions, State and local governments which receive Federal aid for construction are required to incorporate the appropriate provisions of Executive Order 11246 into their contracts. Compliance specialists, thus, must work through the State and local government agencies which administer these funds. This indirect relationship can present serious enforcement problems, compounding the already great difficulties in breaking down trade union barriers to entry into the construction trades.

An unsuccessful effort was made by the OFCC in 1966-67 to extend Executive Order 11246 still further with respect to Federal aids. The OFCC attempted to amend its regulations to make employment under all Federal grant-in-aid programs subject to the order. (State and local employment is not presently covered under Title VII of the Civil Rights Act of 1964.) This proposal, which was the subject of protracted inter-agency controversy between the Labor Department and the Justice Department, was shelved in mid-1967. A major reason for its demise was the Senate compromise language in Title VI of the 1964 Civil Rights Act, the title which bans discrimination under Federal aid programs. Section 604 of Title VI exempts employment, "except where a primary objective of the Federal financial assistance is to provide employment." To date, Section 604 has not been interpreted as prohibiting the President (as opposed to the Congress) from requiring equal employment under Federal grants for construction under Executive Order 11246. Nevertheless, it has put a damper on efforts to extend the order to other forms of Federal aid.

Although the Civil Rights Act of 1964 has had a dampening effect as far as Federal grants-in-aid are concerned, this is far outweighed by the overall impact of the 1964 act on the implementation of Executive Order 11246. The enactment of Title VII, barring discrimination in all private employment, raised the legal status of the entire contract compliance program. The Federal commitment to equal employment is now a matter of law, rather than exclusively an expression of presidential policy. The new legal status of the Federal Government's ban on job discrimination was one of the underlying elements of the strategy of the Labor Department's Office of Federal Contract Compliance when it was created in January 1966.

ROLE OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE

Executive Order 11246 makes the Secretary of Labor responsible for the administration of the order and empowers him to "adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof" (Section 201). The Department's administrative role in the government contract compliance program dates back to 1953. The Secretary of Labor was Vice Chairman of the President's Committee on Equal Employment Opportunity under both Presidents Eisenhower and Kennedy. In addition, he was assigned responsibility in the first Kennedy order for the "general supervision and direction of the work of the Committee and of the execution and implementation of the policies and purposes of this Order." 21/ The Labor Department was therefore a logical successor to the President's Committee on Equal Employment Opportunity when its budget came under Congressional fire in the 88th Congress.

The Office of Federal Contract Compliance in the Labor Department was established by Secretary Wirtz in 1966. Some employees of the President's Committee on Equal Employment Opportunity merely transferred over to the OFCC. Most found other positions in expanding equal employment opportunity programs of contracting agencies. The OFCC had a budget of $436 thousand and a full-time staff in Washington of twenty-eight persons in fiscal 1967. Its budget request for fiscal 1968 asked an increase of $108,600 and eight additional full-time staff positions. 22/ These figures do not include funds or personnel for staffing the voluntary Plans for Progress program or operating the compliance programs of the various contracting agencies.

The Basic Strategy Choice: Enforcement v. Voluntarism

When it was first established, the OFCC faced a task of policy interpretation similar to that which confronted the EEOC in its early months. Simply put, the issue was whether the emphasis should be on the enforcement or voluntary route to compliance.

The voluntary approach is typified by Plans for Progress. This organization (whose members are private employers, but whose non-professional staff salaries are paid by the Department of Labor) was established in 1961 as an "adjunct" to the President's Committee on Equal Employment Opportunity. There was considerable feeling at the time that before the first Kennedy order could be effectively enforced, it would be necessary to have leading government contractors take voluntary action, thereby setting the climate for the government to insist that other contractors follow suit. Some disagreed with this view. According to Harold C. Fleming, several members of the President's Committee and civil rights leaders felt that an emphasis on voluntarism "could only weaken the approach to firm and uniform application of compliance procedures." 23/ In the final analysis, proponents of the Plans for Progress program prevailed on the grounds that the two programs "were not incompatible but supplementary." 24/

The OFCC entered this picture in 1966 with an announced preference for the enforcement routine as opposed to continuation of the emphasis on voluntarism as under the then prominent Plans for Progress approach. In repeated statements, OFCC officials insisted that credibility had been established under Plans for Progress and that now the job was to enforce the equal employment clause in the same way that other contract clauses are enforced. In the words of one Labor Department official, "If the nuts and bolts are the wrong size, you send them back. Now, we are going to take exactly the same approach on equal employment opportunity. It's a new ballgame." 25/

But, not everyone agreed that there was "a new ballgame." The OFCC's stated decision to crack down was dismissed by leaders in the civil rights community as "tough talk from the top" unsupported by a willingness or determination to apply the necessary sanctions. These critics of the program maintained that unless and until important contracts are withheld or terminated contractors would do no more than give "lip service" cooperation.

On the other hand, defenders of the OFCC's new tougher enforcement policy insist that the only reason contracts have not been terminated is that when employers know that the government is serious, they cooperate. To use the words of one respondent, "All that is needed is to take the employer to the cliff and say, 'Look over, baby.'" Defenders of the compliance program further point out that contracts have been delayed and hearings have been held on the invocation of the debarment and withdrawal penalties. The OFCC in other instances has used as a warning device the issuance of government-wide orders requiring that until further notice contract agencies must consult with the OFCC prior to the award of contracts to a given firm. OFCC officials maintain that few people are aware of these steps because immediately after they are taken the contractors involved move into compliance.

OFCC Relations with Contracting Agencies

A close reading of Executive Order 11246 suggests that the OFCC actually may not be in a good position to implement its advertised crackdown. Each contracting agency is assigned "primary responsibility" for obtaining compliance, while at the same time they are directed to abide by all rules, regulations, and orders of the Secretary of Labor. What procedure is to be followed if a directive on contract compliance from the Secretary of Labor is rejected or, as is more likely to be the case, simply ignored by one of his cabinet peers is nowhere provided for.

The Labor Department, through the OFCC, has used its power to issue orders and regulations for contracting agencies cautiously. Far and away the most common criticism of the OFCC on the part of compliance personnel in other Federal agencies is that the OFCC has not done enough in issuing clear guidelines and directives for those charged with implementing the order. It was not until two and one-half years after its creation that the OFCC issued its long-promised new rules and regulations. This delay occurred despite the fact that new regulations were promised as soon to be issued and described in some detail at the January 1967 meeting of Plans for Progress. 26/

The mainstay of the OFCC's regular relations with contracting agencies is the program conferences which it holds on an annual basis with each of the major compliance agencies. Although summaries of all contract compliance reviews are submitted to the OFCC, Labor Department personnel only become involved in the details of specific cases where serious and sanctionable conditions exist or when an overall strategy decision has been made to concentrate on selected industries, geographic areas, or types of problems. In these instances, the OFCC's usual procedure is to work closely with contracting agencies in applying pressure against recalcitrant contractors. Back-up assistance on legal matters is provided by the solicitor's office of the Labor Department.

This arrangement whereby the OFCC becomes involved in cases in which serious and sanctionable conditions exist raises important questions about the nature of the contract system. The intent of the original Kennedy order, which first established specific penalties for noncompliance, was that contracting agencies on their own would impose these penalties. The President's Committee (predecessor of the OFCC) was seen as essentially a coordinating body. To the extent that the contracting agencies now process their most difficult cases through the OFCC, there is a natural tendency for enforcement action to come to be regarded as only possible in exceptional cases with the OFCC's involvement. The movement toward a more active role for the OFCC has occurred gradually. It indicates the limitations of the original Kennedy concept of individual agency enforcement.

On complaints of job discrimination under Executive Order 11246, the OFCC takes a different approach in its relations with contracting agencies than it does on compliance reviews where it becomes involved in exceptional cases. The OFCC requires full reports on all complaint investigations. According to the director, the OFCC "uses the complaint machinery to monitor the compliance program for the investigating agencies." 27/

Despite the existence of these inter-agency reporting requirements, the general position of the OFCC has been to de-emphasize complaint handling. At the fiscal 1968 House appropriations hearings, the director said, "the bulk of our work does not deal with responding to and servicing complaints." 28/ Complaint disposition has taken a back seat to more comprehensive OFCC compliance efforts. This reflects the basic orientation of the program emphasizing broad compliance as opposed to the more limited case-by-case approach.

From January 1966 when the OFCC was established through July 1967, 528 complaints were received. This counts complaints with relatively large numbers of individual complainants (15 or more) as a single case. It represents a rate of 375-400 complaints per annum.

The most important policy innovation by the OFCC to date has been the adoption in May 1966 of a government-wide program of pre-award action under Executive Order 11246. 29/ The purpose is to take advantage of the greater leverage which the government has immediately prior to final action on the awarding of major contracts. On all contracts of $1 million or more, the OFCC has required since June 1, 1966 that there be a comprehensive review of the potential recipient's employment system before the contract is awarded and that it not be awarded until the contractor is adjudged to be in compliance with the order. Subcontracts of over $1 million are subject to the same requirements. Full reports on all pre-award reviews must be transmitted to the principal contract compliance officer of each contracting agency. He, in turn, is required to transmit this report to the OFCC within thirty days after the award is made.

This pre-award approach has wide support among those who favor strengthening the contract compliance program. The government's experience so far is said to indicate that, when a contractor is placed in a position of wondering whether he is going to be found eligible, he will agree to stronger affirmative actions than in situations where the employer being reviewed is already engaged in government contract work.

In May 1967, one year after the pre-award order was issued, the Secretary of Labor issued a related order requiring "assurances" by all bidders on Federal contracts of $10,000 and over that they do not maintain segregated facilities. 30/ Actually, the ban against segregated facilities is long-standing. It is one of the first and most obvious items checked on a compliance review. The significance of this directive is that it lays the legal groundwork for applying sanctions quickly against contractors in noncompliance for this reason. Violators (i.e., persons who file fraudulent assurances) are subject to criminal prosecution for false representation as well as to other penalties proscribed under the executive order.

A final OFCC interagency activity involves the training of contract compliance specialists. The OFCC and the Office of Career Development of the U. S. Civil Service Commission conduct joint one-week "workshops" on equal employment opportunity for contract compliance specialists. Four "workshops" had been held as of mid-1967. Approximately thirty contract compliance specialists participated in each of these "workshops" with the cost prorated among the participating agencies.

The Separate Treatment of the Construction Industry

Up to this point in the discussion of the OFCC, no distinction has been made as to the ways in which the office treats different industries. It is necessary now to separate out the construction industry, which is organized and conducted on a different basis than most manufacturing and service industries. All construction projects involve a single locale, a relatively limited labor market, and have a different array of subcontractors. Whereas the OFCC coordinates the government's supply and service contractors by allocating them among the various contracting agencies so there is a single contracting agency responsible for every major firm doing business with the government, this arrangement is not appropriate for the construction industry. Instead, each Federal agency is responsible for compliance on all of its own construction contracts and on grants-in-aid which it makes for construction projects by state and local governments.

As a means of coordinating the construction industry, a system was established in April 1965 whereby individual "area coordinators" for construction are designated to work on a metropolitan or labor market basis. There were fifteen area coordinators covering twenty-two metropolitan areas at the end of 1967. The financing of this program is a throwback to the President's Committee on Equal Employment Opportunity. Each area coordinator is on the payroll of one of the major contracting agencies but reports directly to the assistant director for construction of the OFCC. This has resulted in some truly unique interagency relationships. For example, in one city studied, the area construction coordinator is an employee of HUD, shares an office with the Labor Department's Bureau of Apprenticeship and Training, and reports directly to the OFCC.

To strengthen this areal approach, steps were taken in 1967 by the OFCC to set up government-wide compliance programs for construction in selected cities. These are called "special area programs." The first four were in Cleveland, Philadelphia, San Francisco, and St. Louis. In these cities, the area coordinator and OFCC officials have attempted to have all Federal agencies with construction projects proceed on a unified and intensive basis to increase the number of minority group members employed as construction workers.

The special area program in Cleveland is by far the most important of the four. The Cleveland "Operational Plan for Construction Compliance," announced in March 1967 requires affirmative action programs which "assure minority group representation in all trades and in all phases of the work." 31/

The most noteworthy point about the implementation of the Cleveland plan is the adoption of what have come to be referred to as "manning tables" for the employment of minorities. In June 1967, during pre-award compliance negotiations with a major NASA contractor, the contractor made a specific proposal in the form of a manning table on the number of skilled workers he would use on the job and the number in each trade who would be minorities. Shortly thereafter, the decision was made by the Federal agencies involved to require similar manning tables for all Federal construction contractors in the seven county Cleveland area. Awards on $80 million in federal construction contracts in the area were delayed pending compliance on this new basis. By mid-November, Cleveland contractors had committed themselves to hire 110 minority group craftsmen out of total crews of 475 in the mechanical trades and for the operating engineers. 32/

Nearly coincident with the Cleveland plan, a landmark court decision, Ethridge v. Rhodes, 33/ was handed down by Federal district judge, Joseph P. Kinneary, sitting in Cleveland. This decision had important implications in Cleveland and for the entire contract compliance program. Judge Kinneary ruled that under the 14th amendment the Governor and other State officials of Ohio are prohibited from entering into contracts with employers who use hiring halls that practice discrimination in admitting members and in job referrals. Relief under the Kinneary decision is obtainable through court injunction proceedings. 34/

The strengthening of the compliance effort in Cleveland, and in particular the manning table concept, elicited strong objections. Labor movement officials were especially critical, dismissing manning tables as "piles of nonsense and illegal." Although government spokesmen distinguish between manning tables and quotas -- the contractor sets the former and the government the latter -- they recognize the political sensitivity of this approach. It has not yet been carried over to the other three cities with special area programs or to cities in which the OFCC has area coordinators. Moreover, Secretary of Labor W. Willard Wirtz in a speech to the Building and Construction Trades Department, AFL-CIO, November 29, 1967 cited the Cleveland operational plan as involving an exceptional set of circumstances. He indicated that the use of the manning table approach would not become a general policy.

> In at least two cases -- in Cleveland and in Philadelphia -- the Government contract situation had gotten so bad, with antagonism and recrimination piled on top of each other, to the point where symbolism was more important than substance, evidence more important than equity, that there was probably no effective alternative to that kind of ruling. But it isn't right as a general policy, and it

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> won't work. Even if it drags someone who worships his prejudices into line, it demeans somebody else who has done the right thing for the right reason. 35/

The Philadelphia special area plan is closely modeled after Cleveland's. A major administrative difference is that, while the coordinating agency for the Cleveland plan is the Department of Housing and Urban Development, the Philadelphia plan is under the aegis of the Federal Executive Board made up of regional Federal officials. On paper the Philadelphia plan differs from Cleveland's in that it requires a "representative number" of minorities in each trade, rather than just representation with the degree unspecified as under the Cleveland plan. Of the other two area programs, San Francisco's is described as the most disappointing by government officials. 36/ In St. Louis, which had the first area plan, activity tapered off after the filing of the court case on the St. Louis commemorative arch described above.

While the implementation of all four special area plans have required additional manpower and resources, these demands have not been particularly heavy. The important new element (especially in Cleveland) is not resources, but the use of political leverage, namely delays on major contracts pending agreement to comply with requirements under Executive Order 11246.

Overall, enforcement of the Executive order for construction has been notably uneven. On one end of the spectrum is the Cleveland plan. Next in order of strength of enforcement are the other special area programs; then the remaining cities in which area coordinators are on the scene; and finally the many areas of the country (mostly smaller cities) where there are no area coordinators. Even where area coordinators are on the scene, their functions are usually limited. Area coordinators ordinarily do not themselves conduct reviews and in some cases are not even permitted to make on-site investigations. They are generally limited to the sponsorship of meetings, promotional and informational functions, and advice and assistance to Federal agency officials. Taking into account the long-standing barriers to minority group entry into the building trades and the indirect relationships between both the Federal Government and the contractor and the contractor and the unions, it is not surprising that the area coordinators' efforts often fall short of their objectives.

THE CONTRACTING AGENCY

Prior to the issuance of Executive Order 11246, the only agencies which devoted full-time staff to the enforcement of the Presidential order on equal employment were the Department of Defense and the General Services Administration. When the Johnson order took effect in October 1965, the Department of Defense had approximately seventy-five full-time personnel assigned to contract compliance. The new order and nearly concurrent effective date of Title VII of the Civil Rights Act of 1964 resulted in the establishment of contract compliance programs with permanent staffs in many other agencies. The situation as of March 1967 is shown on Table 4-1.

TABLE 4-1

Contract Compliance Professional Personnel
By Agency as of March 1967

Agency	Full-Time	More Than 75%	More Than 50%
Defense	87	-	-
Post Office	27	-	-
Housing and Urban Development	25	-	6
Health, Education and Welfare	18	1	1
Commerce	14	6	2
Interior	14	1	1
Atomic Energy Commission	8	2	7
General Services Administration	8	-	2
Agriculture	7	-	-
Veterans Administration	5	5	1
Federal Aviation Agency	4	-	3
State	4	-	-
National Science Foundation	3	-	-
Tennessee Valley Authority	3	-	-
National Aeronautics and Space Administration	1	-	1
U.S. Information Agency	-	-	1
Totals	228	15	25

Source: Office of Federal Contract Compliance

The Structure of the Compliance Function

Table 4-1 gives only part of the picture. The big problem in measuring staff time devoted to contract compliance is accounting for agency personnel who are involved in administering Executive Order 11246, but for whom this is a relatively minor, if not incidental, job responsibility. This reflects a central structural question facing all contracting agencies: How should the responsibility for contract compliance be related to, and coordinated with, ongoing contract administration functions?

The OFCC estimated in 1968 that there were 225,000 contractor facilities subject to the order. 37/ Assuming that contract compliance reviews take an average of one week to conduct and write-up and assuming that existing professional personnel assigned principally to this area did nothing else, it would not be possible with existing staff to review annually even 10 percent of the covered facilities. Unless present staff levels are dramatically increased, the only answer lies in achieving a multiplier effect in the deployment of contract compliance specialists. Through the efforts of the full-time and nearly full-time contract compliance specialists, other Federal officials must be brought to incorporate into their work programs the performance of operations necessary to the administration of the contract clause on equal employment opportunity. Ideally, the role of contract compliance specialists should be a mix between aiding procurement officers in their own agency to implement Executive Order 11246 and conducting reviews themselves of major contrators or in cases involving special compliance problems. Specialists can aid procurement officers in many ways; for example: (1) helping them understand the general terms of the order; (2) advising them on its meaning under specific circumstances; (3) providing information on precedents and on the efficacy of different types of affirmative actions; and (4) participating in the conduct and analysis of reviews of major contractors.

The achievement of this multiplier effect is made difficult by the nature of the procurement systems of the Federal Government. The fundamental mission of procurement officers throughout government is to see to it that needed items are available on time, in sufficient quantity, and according to the "specs." Many procurement officers are not interested in, or sympathetic with, civil rights problems. Even if they are, they are unlikely to be aware of the diverse and subtle ways in which job discrimination is manifested in different industries, occupations, and geographic areas. Either consciously or unconsciously they may regard the equal employment opportunity order as a quite separate and potentially hard to handle government objective.

Under these conditions, the multiplier effect requires determined effort on the part of top administrative officials to make their agency take the equal employment function into account along with its other responsibilities. Compliance specialists must be put in a position, working through their superiors, to see to it that uncooperative procurement officers give the necessary recognition to the goals and requirements of Executive Order 11246. Still, there are bound to be situations in which procurement and equal job goals are in basic conflict. All big organizations at one time or another face decisions requiring the reconciliation of conflicting goals; although there is no question that the implementation of the equal job order offers a classic illustration of this problem.

The various contracting agencies follow much the same procedures in the conduct of general and pre-award reviews of government contractors with variations for different types of industry and sizes of facility. The structure of compliance agencies under the order, however, differs quite widely. Descriptions are presented in this section of the contract compliance machinery of five agencies: the Department of Defense; General Services Administration; Post Office; Department of Health, Education, and Welfare; and Department of Housing and Urban Development. A notable characteristic which runs through these agency descriptions is the rapid pace of the organizational reshuffling of compliance programs.

The Department of Defense. As would be expected, the Department of Defense has jurisdiction over far and away the largest number of companies doing business with the Federal Government. It is estimated that as many as three-quarters of all Federal supply and service contracts are with the Department of Defense. The Department of Defense common-items supply agency (the Defense Supply Agency) alone has over 50,000 employees.

The Defense Department's contract compliance machinery has undergone two major organizational upheavals since October 1965. In part, these reshuffles reflect personality conflicts within the top levels of its compliance system. They also reflect efforts to structure the compliance function so as to achieve a multiplier effect in its implementation.

Prior to October 1965, each of the three military services had its own separate contract compliance unit. There was also a Department-wide compliance unit for common-items procurement in the Defense Supply Agency. Each unit was organized and operated on a different basis and there was strong rivalry among them. Under the first major reorganization, the three military services and the Defense Supply Agency were directed to consolidate their contract compliance activities into a single unit. Although the October 1965 order directed that this be done in ninety days, it took eight months to accomplish. In the process, one-fifth of the Defense Department's professional contract compliance staff left the Department for other agencies.

The consolidated contract compliance function was initially placed under the jurisdiction of the assistant secretary of defense for manpower, who has general responsibility for all Pentagon civil rights matters. The contract compliance program under this arrangement had a headquarters complement of sixteen professionals. There were thirteen regional offices with a total authorized staff in fiscal 1967 of 97 professionals and 52 clericals.

The second major reorganization of the Defense Department's contract compliance function was ordered May 21, 1967 effective July 1. It reassigned operating responsibility for contract compliance from the assistant secretary for manpower to the defense contract administration service which is responsible for Defense Department contract management functions. The service is a part of the Defense Supply Agency. This transfer was not a complete shift of responsibility. It did not include "policy direction and guidance." 38/ This responsibility was retained by the assistant secretary for manpower.

Criticism has been expressed by civil rights groups of the 1967 reorganization. They are concerned that the compliance function will be swallowed up by the much larger procurement programs. There is also resentment against having relatively low-ranking military personnel responsible for the assignment and supervision of contract compliance specialists. This controversy was aired publicly when Girard Clark, a former high official of the compliance program, resigned, charging that the reorganization "will diminish efforts to reduce racial discrimination in employment." 39/ On the other hand, those within the Department responsible for the new arrangement say it will strengthen the hand of contract compliance specialists because it gives them more direct authority to affect any given contract. It is furter maintained that the intra-departmental leverage of contract compliance specialists will be preserved because of their relationship for policy purposes to the Assistant Secretary for Manpower.

The issues involed in the 1967 Defense Department reorganization illustrate the points discussed earlier about the multiplier effect and the problem of conflicting goals. Moving the compliance program into the agency responsible for servicing defense contracts should make it easier to involve Defense Department procurement officers in the compliance program on a routine basis. At the same time, it could make goal conflict problems more difficult to deal with. Certainly, there is no one organizational answer. The test of the new contract compliance arrangement is whether those responsible for directing the program can make it work effectively. The Wasington Post in an editorial summarized the situation in the following terms.

> There is no question but that the Defense Department, spending billions of dollars a year in the name of all Americans, has the duty and power to end discrimination by Defense contractors. The public's concern is not how but how well that is done. Whether the hopes of the partisans of the new move are better grounded than the fears of its opponents is unproven. At any rate, the move is a fact; the new system takes full effect July 1. The burden of making it work better than the old one rests squarely on its civilian Pentagon sponsors. 40/

General Services Administration. For purposes of Executive Order 11246, the General Services Administration (GSA) is important because of its responsibilities for the procurement of many government-wide supply items and the construction and management of public buildings.

The organization of the contract compliance function is similar to the arrangement under the Defense Department's latest reorganization in that policy and operating responsibilities are separate. Up until January 1968, policy responsibility was assigned to the General Counsel of GSA. He had a small staff for this purpose called the civil rights program policy staff. Operational responsibility for contract compliance reviews on GSA supply contracts was assigned to GSA's office of compliance which is responsible for contract oversight for the entire agency. The civil rights division within the office of compliance in 1967 had a director and an assistant director in Washington. The remainder of its ten-man professional staff was in the field.

In characteristic fashion, GSA underwent a major reshuffling of its contract compliance machinery in January of 1968. This was the second major reorganization of the program in the space of two years. Under the new system, the contract compliance function was transferred from the Office of the General Counsel to the Office of the Administrator of GSA. The civil rights program policy staff in the Office of the General Counsel was moved to the Administrator's office.

In addition to the GSA personnel assigned full-time to contract compliance, other personnel are assigned responsibilities under the Executive Order 11246. GSA regulations on this subject are explicit and detailed.

Every service and staff within the agency is required to designate a civil rights program coordinator. Moreover, all GSA contracting officers are

> . . . responsible for determining whether prospective contractors appear to be able to conform to the requirements of the Equal Opportunity clause. These officers also shall be responsible for directing to the attention of the Civil Rights Program Policy Staff, through either the Service or Staff Office Civil Rights Program Coordinators or the Deputy Contracts Compliance Officers, any deficiencies in a contractor's equal employment posture noted during contract performance. In addition, these officers are responsible for taking all other actions necessary to assure contractor compliance with the GSA Equal Employment Opportunity Program. 42/

The interviews for this study did not include a large enough sample of GSA personnel to draw conclusions as to whether and how well these directives to contracting officers are carried out. However, one official who was interviewed for this study and who has clear contract compliance responsibilities under the regulations indicated that he did not know anything at all about Executive Order 11246. While this may be an isolated case, it again points up the necessity for determined civil rights leadership and clear and frequent communication of duties in this area to personnel whose primary role involves other types of activities.

For construction contracts, GSA has a different and considerably more decentralized arrangement than on supply and service contracts. In each of the GSA's regional offices, the regional counsel is primarily responsible for implementing the Executive order for the construction of Federal buildings. Compliance reviews are ordinarily made by the contract officer, generally an employee in the field with the office of construction under the Public Buildings Service. He is required to report to the regional counsel on equal employment matters under Executive Order 11246.

The Post Office Department. The Post Office Department is important as far as contract compliance activities are concerned because of its responsibility for the construction of post office buildings and because, as a major user of transportation, it has compliance jurisdiction over truckers and railroads. 43/ The contract compliance workload of the Post Office Department can be broken down as follows: roughly 50 percent for truckers; 25 percent for post office construction; and 25 percent for railroads and Post Office suppliers not assigned to other compliance agencies.

The Post Office program like that of the Defense Department and GSA has been a victim of reorganizational roulette. When the department's compliance program was established in 1961, it was assigned to the General Counsel. The official view at the time was that legal expertise was needed for the program to be truly effective. Then, in April 1964, the program was transferred to the office of the regional administrator. The director of regional administration was designated as the Post Office Department's contract compliance officer. One of his deputies was made the full-time administrator of the compliance program in charge of a three-man Washington staff for contract compliance. As of mid-1968, the Post Office had 48 professionals in the field designated as "contract compliance examiners." This arrangement with contract compliance assigned to the director of regional administration lasted three years. It was terminated in June 1967, when the contract compliance function was switched back to the General Counsel.

The Post Office Department stands out among Federal agencies for the vigor of its compliance efforts. The Department is alone in having passed over the low bidder on a Federal construction contract for failure to comply with the executive order. This has been done on two occasions. Furthermore, several Post Office construction contractors have been "blacklisted" from receiving future contracts, and in a number of instances construction contract awards have been delayed pending a satisfactory contract compliance agreement.

Aside from construction, the Post Office Department has had its greatest difficulties bringing truckers into compliance. Here the big problem is the employment of Negro sleeper-drivers. Drivers customarily travel in pairs in over-the-road trucking. One sleeps in the back of the cab while the other drives. Integration of these teams is strongly resisted by companies and unions alike. Several companies have refused to cooperate in any way with the government's efforts to integrate sleeper cabs. The following excerpts from a March 1967 speech by the former deputy contracts compliance officer of the Post Office Department are illustrative of problems and tensions in this area.

> . . . . one large company which has been training Negro sleeper-cab drivers tells us that its employees, while not opposing Negroes into line-haul jobs, finds its white drivers reluctant to go to truck stops where drivers for other companies speak in the most vulgar possible terms of the tomorrow when those drivers themselves will be sharing the bunk in a cab with a Negro.
>
> * * *
>
> There was a period when a Negro chauffeur was a suburban status symbol. Today we are told too often that a Negro does not have the coordination necessary to make a good Diesel tractor-operator.
>
> * * *
>
> I, for one, feel more than a little unclean whenever an operator suggests that he might be able to place Negroes in sleeper service provided that each such Negro agrees to take off whenever his accepted partner absents himself from duty. 44/

The Post Office Department in early 1967 submitted case files and supporting materials to the OFCC recommending government-wide action to apply sanctions against four of the most obstinate trucking companies. These cases were returned by the OFCC for additional investigatory material and were re-submitted by the Post Office Department in June. Action was still pending as of the middle of 1968.

Department of Health, Education, and Welfare. Until recently, Department of Health, Education, and Welfare (HEW) contract compliance activities were limited. Its almost exclusive civil rights compliance function was the implementation of Title VI, barring discrimination under Federal aids of which HEW is the largest dispenser. The Department's major effort under this heading involved school desegregation in the South. The controversy which has arisen in this field is well known and has important implications for the contract compliance program. The strong political criticism which HEW has received on its enforcement of school desegregation guidelines illustrates the kind of repercussions which could be expected were steps taken under the contract compliance program to cancel or suspend major contracts involving large corporations and numbers of employees.

Although Title VI enforcement is still the Department's predominant civil rights compliance activity, recent events have increased HEW's workload in the contract area. The passage of the Medicare Act in 1965 resulted in many new contractual relationships between the Federal Government and private insurance companies. Insurance companies, which were formerly covered by the Civil Service Commission, have now been transferred for contract compliance purposes to HEW. Another event that increased HEW contract compliance activities was the transfer July 1, 1967 of responsibility for grants-in-aid for school construction from the Department of Housing and Urban Development to HEW. The OFCC in November 1967 also designated HEW as the primary compliance agency for all universities and hospitals.

The addition of these new areas to HEW's jurisdiction is expected to produce a substantial increase in HEW full-time contract compliance personnel, assuming the necessary appropriations are enacted. As projected, there will ultimately be close to 100 professional contract compliance specialists in the Department. The March 1967 total shown in Table 4-1 is eighteen.

The structure of the compliance function for HEW differs from that of the three preceding agencies. Until 1967, all HEW civil rights activities were dispersed throughout the Department. This arrangement was scrapped in May 1967 as a result of a heated struggle between Congress and the Executive over the organization of HEW civil rights functions. The point at issue was Title VI enforcement. The House Appropriations subcommittee for HEW in its report on the fiscal 1967 appropriation for HEW "commanded" (to use the Chairman's word) that Title VI enforcement be centralized in the Office of the Secretary. 45/ On May 10, 1967, Secretary John W. Gardner announced such a centralization move, which it was later claimed was done "voluntarily before we were ordered to do it." 46/

A contract compliance division was created in the new centralized office of civil rights for HEW in 1968. Although it is responsible for the overall management of the compliance program, operations under the program are still quite splintered. The regional offices of the new civil rights office are responsible for compliance by universities and hospitals holding non-construction contracts. The Office of Education has operating jurisdiction for equal opportunity under all construction contracts. The Social Security Administration manages the program for insurance companies with medicare contracts. The largest number of full-time contract compliance professionals outside of the office of civil rights is in the Social Security Administration which currently has 19 professionals assigned to this program.

HEW's compliance activities could be increased even further should a way be found, or a major effort made, to cover employment by State and local governments. It is estimated that upwards of two million employees of State and local governments (one million of them in elementary and secondary schools) would be brought under HEW jurisdiction if State and local employees were added to the coverage of the 1964 Civil Rights Act or Executive Order 11246 was amended to include all employment affected by Federal grants-in-aid. Another 1.7 million employees of medicare hospitals could be added if Title VI or the executive order were amended to cover employees of these institutions.

As an alternative to extending Title VII or Executive Order 11246 to State and local government employees, an option favored by some civil rights proponents is vigorous enforcement of the equal opportunity standards for merit systems under Federal grants-in-aid. Present Federal merit system standards include a provision prohibiting discrimination in employment.

> Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, or any other personnel action, because of political or religious opinions or affiliations or because of race, national origin, or other nonmerit factors will be prohibited. The regulations will include appropriate provisions for appeals in cases of alleged discrimination. 47/

Although this mandate is strong, its enforcement is not. One possible reason is the splintering of responsibility in this area. Another is the rather narrow orientation of HEW's Office of State Merit Systems, stressing merit system rules and regulations as opposed to performance in relation to the Federal standards.

Department of Housing and Urban Development. In contrast to HEW, the contract compliance activities of the Department of Housing and Urban Development (HUD) are limited to one principal area, federally assisted construction. HUD has a heavy involvement in this area because of its many programs providing Federal financial assistance for the construction of housing and other facilities. HUD's contract compliance specialists work through States and localities and other recipients of Federal financial assistance, particularly local housing and redevelopment agencies.

Reflecting the dispersed organization of the construction industry, HUD's contract compliance program is highly decentralized. Each regional administrator has an assistant for equal opportunity with broad civil rights responsibilities. His staff includes full-time specialists for compliance under construction contracts. Their role is to supplement and assist in the activities of all agency personnel in the contract compliance area.

HUD's basic construction contract compliance program consists of pre-application and pre-construction conferences and compliance reviews. At pre-construction conferences, the recipients of Federal financial assistance, the general contractor, and principal subcontractors are alerted to their respective responsibilities to provide equal employment opportunity at the construction site. These conferences are held for all construction projects over $100,000.

The biggest problem under the HUD program is the distance between the agency and the points at which its leverage must be used. Often HUD personnel must work through State or local grant-in-aid recipients who in turn must work through the individual construction contractor in order to get at union practices which restrict the entry and upward mobility of minorities.

In the four cities selected by the OFCC for special construction programs (Cleveland, Philadelphia, San Francisco, and St. Louis) HUD personnel and grant-in-aid construction projects have been of central importance. In Philadelphia, HUD's regional administrator, as chairman of Philadelphia's Federal Executive Board, is the principal person responsible for implementing the special area program. In San Francisco,the affirmative action agreement between HUD and the Bay Area Rapid Transit (BART) is the key element of the operating plan for the Bay Area program. HUD has also taken the lead under the area plan for Cleveland (the most successful so far) by suspending several million dollars in HUD project funds pending action by contractors and subcontractors to comply with Executive Order 11246.

The policy responsibilities for HUD's contract compliance program is assigned to the director of the office of equal opportunity in the Office of the Secretary. He is the contract compliance officer for the Department and is charged with determining general departmental guidelines for implementing Executive Order 11246 and for providing supervision to the regional administrators who have the line responsibility for administering the Department's compliance program.

Relations Between Congress and the Contracting Agencies

One of the main reasons for the present highly diversified system of Federal responsibility under Executive Order 11246 has to do with the Congress. When the decision was first made to assign full-time personnel to contract compliance during the Eisenhower years, it was felt that chances for congressional approval would be better if funds were separately requested for each of the various contracting agencies rather than for a central administrative apparatus. This conclusion that diversification and the resulting low program visibility would make it easier to win congressional approval has been borne out by subsequent experience. The less exposed the program, the better its chances of going through the appropriations process unscathed. The agencies which have had least difficulty with the Congress are those for which contract compliance funds and personnel are not separately identifiable in the budget but are subsumed instead under a category such as contract administration or management functions. Even where there is a line item in the budget for contract compliance and the personnel involved are separately identified, the amounts for any one agency are relatively small and congressional interest has been correspondingly limited. Most of the questions raised about these items in appropriation hearings reflect only cursory knowledge of the contract compliance function.

Still, some contracting agencies have had difficulty on the Hill. A recent case in point was the Treasury Department. Under a ruling issued by the Department of Justice January 27, 1965, banks serving as Federal Depositories were made subject to the nondiscrimination requirements of Executive Order 11246. The Treasury Department requested $105,900 for fiscal 1968 for ten positions to staff this new function. The House cut out all ten positions. The Senate restored five, but ultimately the whole program was lost in conference. There was no criticism or even mention of the equal employment opportunity program in committee hearing or in the floor debate.

THE VIEW FROM THE FIELD: THE CONTRACT COMPLIANCE SPECIALIST

Contracting agencies differ in the way they designate professional personnel assigned to the implementation of Executive Order 11246. The general term contract compliance specialists has been adopted for purposes of this discussion of the compliance program as seen by Federal personnel assigned in the field to the implementation of Executive Order 11246. The most important function of the compliance specialist is the conduct of periodic and special pre-award compliance reviews. Specialists also perform other functions, for example, sponsorship of community meetings on equal employment, special studies of labor market conditions in the minority community and the provision of technical assistance to employers and perhaps also unions and community organizations.

Typical Steps in a Compliance Review

The first step for the specialist in conducting a compliance review is ordinarily a community survey. If the review is in the city in which the specialist is based, this step is not necessary. Community surveys involve interviews on local labor market conditions with persons such as Urban League employment specialists, representatives of the local chapter of the NAACP, officials of the state employment service, local religious or community service leaders familiar with minority group job prospects, and in the West and Southwest spokemen for organizations representing Mexican Americans. Assuming that the review is not of a large facility where a team approach is required, the reviewer ordinarily spends four to five days in the contractor's locale, with the first day or half-day devoted to the community survey.

The initial visit to the job site is usually devoted to general discussions with the plant manager or the industrial relations director on the contractor's equal employment opportunity posture and recent affirmative action efforts. The specialist generally will have familiarized himself beforehand with the employer's latest employment data. Following the initial discussions, most specialists tour the contractor facility with a representative of the contractor.

Preliminaries out of the way, subsequent discussions with the contractor deal in specific terms with major problem areas and affirmative actions which could be taken to place and upgrade larger numbers of minority group workers. The contractor and the specialist then draw up an agreement on new or accelerated affirmative action steps. This agreement is usually put in the form of a letter to the contractor from the contracting agency.

Special conditions, such as job discrimination complaints filed with the OFCC, require variations in these procedures. The standard procedure on complaints is to incorporate their handling into a general compliance review. This can produce awkward situations, especially where specialists have developed close working relations with major contracting firms. Confronting the employer with a specific wrongful act is likely to be more uncomfortable for the specialist than a general discussion of equal job problems and prospects. Under these conditions, the specialist may press the complainant's case in a way that antagonizes the employer thus undermining chances for a favorable affirmative action agreement. Another danger is that the specialists may, because of his close relationship with the contractor, fail to give full and adequate treatment to the position of the complainant.

Role and Authority of the Contract Compliance Specialist

The research for this project offered an opportunity to study the work in the field of contract compliance specialists and hence the strategy of the compliance program as it actually operates. Is the specialist an umpire in a new ball game with the power to call a man out? Or, is his job that of a salesman to sell equal opportunity to the contractor and then advise him on how his product should be used?

Interviews were conducted with contract compliance specialists from seven federal agencies in six cities. Although there are always exceptional circumstances, the majority of the respondents were found to interpret their basic role as counselors or advisors to assist the contractor in putting himself in compliance with the executive order. The reason for the discrepancy between the OFCC's stated policy to enforce the equal job requirements like any other contract clause and the attitudes and actions of contract compliance specialists are not easily established. In some cases, it may be that word has not yet filtered down from the OFCC to individual specialists. But this is probably not true in many instances. Most specialists interviewed are aware of what the OFCC says it wants them to do. Their reasoning in maintaining a basically advisory relationship with contractors often involves very pragmatic considerations. They see the counselor-advisor relationship under the present circumstances as the best way to achieve "results," the oft-repeated test of compliance program effectiveness. Unless the contract compliance program is supported by a commitment from the top to use political muscle, according to this view, compliance specialists will be unable to force contractors to move beyond what they are willing to do voluntarily in response to suggestions and fairly gentle prodding.

Put another way, the approach of many contract compliance specialists is a function of their assessment of how their efforts can be made effective with employers. Perhaps this view is mistaken; specialists may fail to press for sanctions because they believe they will not be supported in doing so. However, in several cases specialists interviewed indicated on a confidential basis that they had been rebuffed in efforts to have their agency penalize contractors whom they found uncooperative. Whatever the reasons,the conclusion which emerged from the field research interviews is that announced decisions of the OFCC to crackdown on violators has not yet been successfully transmitted into the field.

THE EMPLOYERS' VIEW

There is today a specialized community of industrial relations and personnel managers of large firms who are fully familiar with the procedures, scope, and impact of the contract compliance program. 48/ In the case of firms which conduct a large proportion of their business with the Federal Government, these officials are likely to have had personal contacts with compliance specialists conducting on-site reviews. The same officials are usually responsible for filing the EEO-1 form which involves considerable work collecting data on minority group employment.

Other employees of government contractors also have important functions under the compliance program. On-line supervisors who hire, promote, and lay off workers are especially important. Corporate executives must communicate equal employment opportunity policy to this level as an explicit corporate commitment that cannot be violated.

> All reports indicate that if integration is to succeed, management must take a firm no-nonsense position. Stories like the following are often heard: During a meeting that a company called to announce a new equal employment policy, one supervisor stated that he would submit his resignation as soon as the first Negro was placed in his department. The top executive present countered quickly, "If your resignation is submitted on that ground, it will be accepted immediately." This stilled all opposition. 49/

Employers, as would be expected, vary in their attitudes towards Executive Order 11246. For those employers willing to play a leadership role on equal employment, the prodding of the contract compliance program can make it easier for them to justify steps which some in their community or industry might regard as extreme.

> In many cases, the fact that outside agencies have established standards has made it easier for companies to implement their own policies. To those who object to the introduction of Negroes, management can now say it has no choice but to do what the government (or even civil rights groups) has told it to do. These pressures have strengthened the position of those who support hiring additional Negroes, and it has at times almost silenced those who opposed them. 50/

Other employers resent government pressure. The Chairman of Plans for Progress made this point and stressed voluntary affirmative action programs by business in his 1964-65 report.

> No government action or agency can achieve this objective. It can be done most effectively if a voluntary business organization--such as Plans for Progress--takes the lead through affirmative action programs to help assure the continued growth and vitality of our democratic private enterprise society. 51/

But voluntarism may not be enough. Recent statements by both the EEOC and OFCC have indicated considerable skepticism about the efficacy of the voluntary approach. Former Chairman of the EEOC, Steven N. Shulman, in remarks at the 1967 Plans for Progress conference, used data from EEO-1 forms to show that publicly committed Plans for Progress companies are not ahead of the nation in their employment of Negroes.

> . . . we went through and picked up some figures regarding minority employment from the EEO-1 forms. Of the first 100 companies to join Plans for Progress, four employ less than 1 percent Negroes throughout the corporate enterprise; five employ more than 1 percent but less than 2; sixteen employ more than 2 percent but less than 3; which means that 25 percent of the first 100 -- one out of every four -- employ less than 3 percent. Moving out of the first 100 -- and by the way, Plans for Progress reached 104 in January 1963 -- eleven employ less than 1 percent; twenty-one more than 1 but less than 2; forty more than 2 but less than 3; or a total of seventy-two employing less than 3 percent. Now these figures are the tools that Plans for Progress itself decided upon as a way to measure progress. 52/

Taking New York City white collar figures alone, the same survey found that 30 randomly selected non-Plans for Progress companies had higher percentages of Negro employees in white collar jobs than the 30 Plans for Progress employers with headquarters in New York.

> There are thirty Plans for Progress companies with headquarters in New York. We compared the white collar figures of those 30 companies with 30 randomly selected non-Plans for Progress companies who have headquarters in New York. The results were, in the officials and managers classifications: Negroes .31 per cent in Plans for Progress, .22 per cent in non-Plans for Progress; Negro females .2 per cent in Plans for Progress, 0 in non-Plans for Progress; Spanish-speaking .1 in Plans for Progress, .86 in non-Plans for Progress. But in all white collar jobs the figures were: Negroes 2.6 in Plans for Progress, 2.7 in non-Plans for Progress; Negro females 3.52 in Plans for Progress, 3.35 in non-Plans for Progress; and Spanish-speaking .78 in Plans for Progress, 1.92 in non-Plans for Progress. 53/

While voluntarism may be despaired of at the top in government, it has already been indicated that stronger enforcement, as a general policy, has not yet percolated down to the operational relationship between the contract compliance specialist and the employer. It now remains to consider the employers' view of Executive Order 11246 as presently interpreted and implemented.

Employer Relations with Contract Compliance Specialists

On the basis of the field research for this study and the literature, there is evidence that employers are satisfied with the current interpretation of their obligations under the executive order. Corporate executives with responsibility in this field tend to use the same terminology as government officials, namely that what is needed is to take affirmative actions which achieve results. Quotas and special preferences are depicted as neither necessary nor desirable. The National Industrial Conference Board study, Company Experience with Negro Employment, concluded that "ideas of 'quota hiring' and 'preferential treatment' are repugnant to most of the executives interviewed. They prefer to speak of 'goals' and of 'affirmative actions' in Negro hiring." 54/

The readiness of employers to go along with the current formulation of the objectives of the Executive order suggests that they may feel they have an advantage with this approach. When a given employer is opposed to an affirmative action recommendation made by a contract compliance specialist, he can control the situation quite easily. For one thing, he can accept the recommendation in principle, but then hold back on implementation. Chances are good that the same compliance specialist will not make a return visit, and, if he does, it probably will not be for another year or longer. When he is next reviewed and if he is asked about the recommendation in question, the employer can say that for some reason (e.g. because of changes in personnel needs or the available labor supply) he was not able to put this particular affirmative action step into effect.

In the alternative, the employer faced with an affirmative action recommendation that he regards as unacceptable can in many instances question the recommendation on the basis that it involves entering into the undefined gray area of steps not actually required under the order. This tack is likely to bring the response from the specialist that the employer does not necessarily have to accept this particular recommendation, but that he must act in other areas to satisfy the acid test, "results."

To use specific examples, a contract compliance specialist may suggest a special training program for nonwhites for a job category in which they are underrepresented. Or he may suggest that for the next group of openings for certain higher-level jobs "special consideration" in recruitment be given to nonwhites. In varying degrees, these proposals lend themselves to either of the two employer responses just described. They can be accepted in principle, but not vigorously pursued, or they can be challenged as going beyond the scope of the order by encompassing preferences or quotas in a way in which the order, in the employer's view, does not contemplate.

Still another possible employer strategy relates to labor market conditions. Where there is low-level minority group representation at a given facility, the contractor may contend that the real problem is a lack of qualified minority applicants. Thus, he may urge that the onus should be placed on the schools and on public and private manpower training programs to prepare and aid the disadvantaged -- not on the employer.

In response to this argument, the contract compliance specialist's leverage once again is limited. He may ask the employer to scrutinize his eligibility standards to see if tests or other entrance requirements can be adjusted. He may recommend other recruitment sources, for example, a local manpower program, a Negro vocational school, or the minority group representative of the employment service. He is not, however, in a good position to require the employer to recruit disadvantaged minorities in jobs for which they have in the past been considered unqualified. Although an increasing number of corporations are undertaking programs to provide jobs for this group, these programs are generally regarded by employers as separate and apart from their obligation as a government contractor and as going beyond the requirements of Executive Order 11246. 55/ Civil rights leaders and others concerned about high rates of minority unemployment and underemployment take issue with interpretations such as this of Executive Order 11246. They argue that the establishment of openly preferential training and recruitment programs for the members of minority groups is an obligation which properly falls upon all employers who choose to do business with the Federal Government.

In sum, there appear to be a number of ways in which an employer can "get by" without too much effort under the present system. This is not to ignore the fact that many employers are sincere and determined about their equal job programs. The point is that, with a cooperative attitude, most employers who choose to do so can circumvent "suggested" employment policy changes and yet still avoid serious consequences under Executive Order 11246.

THE CIVIL RIGHTS COMMUNITY

From the viewpoint of civil rights leaders, the highly splintered administrative structure of the contract compliance program presents obvious problems above and beyond any substantive considerations. In large metropolitan areas, resident Federal officials number in the thousands and are spread about in several different office buildings. Finding out which agencies have personnel in the community (the location of regional headquarters vary widely), where these offices are located, which have contract compliance specialists, and whether they are competent is a major undertaking, particularly for persons unfamiliar with the administrative labyrinth of the Federal Government. One local civil rights leader complained that compliance program officials "hide out in government offices and make no effort to make themselves known to grass roots civil rights organizations." Another respondent noted that "it is impossible to tie down reasonable relationships with all of these offices."

In those contacts which local civil rights groups do have with the compliance program, they frequently complain that they are "used to get off the hook." For example, although an employer may agree as an affirmative action to contact employment-oriented civil rights organizations such as the Urban League, this is often done perfunctorily. In some cases, a form letter is sent informing local civil rights groups that the firm is an equal opportunity employer. Other firms telephone the local office of the Urban League to request that highly skilled applicants be referred the following day or week, which League officials say they cannot possible do. Still other firms, as an affirmative action, routinely send all job bulletins to the Urban League, the NAACP, and perhaps a job-oriented anti-poverty agency. These organizations, however, have limited staffs and resources and most cannot use this information effectively. Employers certainly cannot be blamed when the basic problem is the lack of staff or follow-through on the part of local civil rights and anti-poverty groups. Yet, the fact remains that many of the relationships between contractors and local civil rights groups lack specificity and local civil rights leaders are justified in their complaints about not having adequate opportunities to participate in structured programs of affirmative action under the contract compliance order.

Another major criticism by civil rights groups concerns the lack of manpower allocated to the compliance program. As noted earlier, the number of government contracts far exceeds the capacity of full-time equal employment opportunity specialists. Small employers tend not to be covered at all. Even for large contractors whose operations are reviewed by contract compliance specialists, visits are infrequent and follow-ups limited. The specialist has all he can do to examine a firm's compliance posture when he visits a contractor facility. He almost never has time to tie his efforts in with those of local civil rights leaders working on fair employment programs for the community as a whole.

But these complaints about the administration of the compliance program -- organizational complexity, perfunctory contacts, failure to consult civil rights leaders, and lack of manpower -- pale in significance when compared to the fundamental criticism that the program simply is not strong enough.

The Main Complaint -- Failure to Apply Sanctions

Far and away the most common complaint of civil rights leaders about the contract compliance program is the lack of instances in which sanctions and penalties have been applied against major contractors. Criticism to the effect that "they have never pulled a contract" or "turned the water off" was widespread in the field research. It is conceded that the pressures of the program have in some cases helped promote equal job opportunity. But, in the expressive words of one respondent, the Executive order is regarded by most civil rights advocates as a "sleeping giant lying in the money it controls." In the words of another,

> Employers only understand economics, the same language understood by public officeholders. It frustrates and further disillusions and alienates Negro workers when they understand the huge power the Federal Government has over funds for discriminating employers, powers which they give every evidence of comprehending, but being totally unwilling to use.

Several civil rights leaders attributed what they consider the unwillingness of the government to apply strong sanctions to political considerations. Clearly, if the government lifts a major contract or declines to make an otherwise awardable contract where a large employer is affected, there are likely to be political repercussions. There have, in fact, been cases in which major contractors experiencing difficulties in complying with the order have successfully prevailed upon members of Congress to intervene on their behalf. Political considerations are seen as particularly compelling in cases involving the construction industry.

> The position of federal officials, and of state and city officials in the North, is dictated essentially by their desire to avoid conflict with the politically powerful building trades unions and construction contractors associations--despite conclusive proof that Negroes and members of other minority groups are unlawfully denied training and employment opportunities in the skilled trades in the construction industry. This failure of will and political courage has resulted in the nullification by disuse of laws and executive orders which purport to prohibit racial discrimination in employment on public works and has similarly vitiated general fair employment laws applicable to private construction. 56/

A number of civil rights leaders interviewed expressed the opinion that an effective crackdown in the contract compliance field would have to be decided upon at the highest levels of government -- the White House, the Cabinet, and the Congress. They indicated strong doubts about the ability of the OFCC to implement its enforcement campaign without such support. While is must be stressed that these are individual political readings, recent experience with efforts to have civil rights objectives made a precondition of Federal grants-in-aid to states and localities lend support to this view.

Beyond Tokenism

A distinction must be made between this criticism of the failure to apply strong sanctions in the context of the current definition of what the order requires and the much broader criticisms which were made of the whole frame of reference within which the order is presently implemented. Many civil rights leaders are dissatisfied with the fundamental objectives of the contract compliance program.

The essence of this criticism is that the government is too willing to accept token minority group representation when the basic thrust of the contract compliance program should be to go beyond tokenism. Here again the question arises: If going beyond tokenism requires preferential treatment or quotas, should the government require that this be done? Several respondents were explicit in recommending that the compliance program be extended in this way. They urged that the responsibility be shifted to the contractor to employ a "reasonable number" of minorities with the decision as to what is reasonable varying according to industry and local labor market conditions. To achieve this goal, it is maintained that contractors should be required to recruit minorities aggressively. If they cannot in this way achieve their reasonable number goal, then they should be required to train a certain number of nonwhite or other minority group workers in-plant.

CONCLUSIONS

There is widespread skepticism as to the seriousness of the government's commitment to the stated goals of Executive Order 11246. The principal problems are not the kind which can be corrected by new procedures, agency reorganization, or clearer guidelines to compliance agencies. The key is political. Our conclusion is that more determined application of sanctions under Executive Order 11246 is imperative if this program is to be effective and respected as such.

This is not to deny that some Federal agencies are pressing hard and getting results. For instance, the OFCC's selected cities campaign for Federal and federally assisted construction has been effective in a number of areas. But the overall implementation of the contract compliance order has been decidedly cautious. While pressures are mounting on some contractors and contracts have been temporarily suspended or delayed under the new pre-award procedures, in no case has a substantial contract been taken away from a major firm because of discrimination in employment or because the employer in question failed to put into effect promised affirmative action measures. In fact, in the case in which the most far-reaching enforcement steps have been taken, the Cleveland area program for construction contracts, the government appears to have backed down.

The principal substantive issue raised in this discussion of the implementation of Executive Order 11246 involves the meaning of affirmative action. The OFCC and most other Federal agencies affected by the order have been reluctant to give precise definition to this central concept. Their strategy has been deliberate. It is based on the belief that if there are no limits to what affirmative action means, it will always be possible to press employers to do more. Governmental officials also argue that the diversity and complexity of industrial relations systems and the desire to promote inventive approaches in this field mitigate against pinning down a specific set of steps that constitute an acceptable affirmative action program.

But this is not the whole story. More is involved than the desire for creativity or differences among industrial relations systems. Many affirmative actions which employers could take embody highly controversial political ideas. A program to recruit and/or train minorities who otherwise would not qualify for entry-level jobs, in effect, may close out job opportunities for whites who *would* qualify and *are* seeking work. This kind of action is seen by those who oppose it as special preference, reverse discrimination, or "super rights" for minorities. On the other side, and just as forcefully, civil rights proponents argue that special preference policies such as these are fully defensible where government contracts are involved.

The same kind of controversy, although even stronger, arises with respect to proposals thich encompass or border on quotas for the hiring of minorities. This occurs frequently in the construction industry where the essential civil rights issue is the often near-total lack of minorities in the skilled trades.

These two issues, stronger enforcement and the imprecision of the affirmative action concept, are closely tied together. Those who plead for stronger enforcement must ultimately answer the question, what do you want to enforce? If their position is that test case enforcement actions should only be made in clear-cut instances where a contractor discriminates and it can be proven, this is much easier than enforcing the order by applying sanctions against employers who fail to live up to their affirmative action commitments. However, the former case could just as easily be treated by the Attorney General under Title VII. Clearly, if the contract compliance program is to achieve its stated goals, more must be done to penalize companies that practice outright discrimination. But a policy of vigorous enforcement also requires that action be taken against contractors who refuse to act affirmatively or fail to take this commitment seriously.

Stronger enforcement of Executive Order 11246 for government contractors who fail to meet its affirmative action requirements could be carried out on the following basis. In all cases where contractors are found to have low-levels of utilization of minority group workers in relation to population, a post-review statement could be drawn up encompassing a combination of targets or objectives for the representation of minorities plus certain highly specific affirmative action measures. The affirmative actions under this approach would be spelled out in detail with the names and numbers of persons involved. Examples would be: to have named personnel recruiters on-the-scene for a stated period in minority group areas; to provide special pre-placement training for a given number of minority group workers in stated job categories; or to implement an in-plant skill enrichment program for selected minority group employees lacking formal requirements for advancement. At the end of a prescribed period, say six months, the contractor would be required to submit to the government either (1) new employment data indicating that the agreed upon employment objectives for minority groups had been achieved or (2) a detailed report showing that the specific affirmative action measures described in the post-review statement had been fully carried out. In effect, the employer would not have to submit proof that he has fulfilled his affirmative action pledges if he can prove instead that he has obtained results. If a contractor did not agree to this procedure or failed to satisfy either of these two criteria, a public announcement could automatically be made to this effect and a closed hearing could be held pursuant to the government's regulations under Executive Order 11246.

For contractors with good equal job records, positive sanctions should be relied upon much more heavily. Successful completion of affirmative action programs agreed to under the procedures above, for instance, could be recognized by public merit awards. High achievement contractors in poverty areas could also be given some form of contract preference or bid-procedure preference as a means of providing more and better jobs for the disadvantaged. The contract compliance system lends itself very well to the use of contract preferences on a selective basis.

Basic to the general conclusion of this chapter in favor of the stronger enforcement of Executive Order 11246 is the assumption that it is appropriate and worth a certain cost to assure that employers have a satisfactory equal job record as a condition of being able to do business with the Federal Government. This is the whole purpose of Executive Order 11246. A strong commitment to this purpose would require some measure of additional resources and personnel for the contract compliance program. Specifically, the agency responsible on a government-wide basis for the administration of Executive Order 11246 would need additional staff to develop and disseminate policy directives, to assist in the enforcement of the order in major cases, and to monitor contracting agency operations. Its role in relation to the contracting agencies and in relation to other federal equal job policies, particularly Title VII of the Civil Rights Act of 1964, would also have to be clarified. Proposals to this effect are contained in Chapter 6.

The discussion in this chapter of the contracting agency's role also highlighted issues of administrative structure. The limited resources in the contract compliance area and the large size of the government's procurement systems suggest that within the various contracting agencies emphasis be given to what was termed the multiplier effect to involve contract administrators on a systematic and routine basis in the implementation of Executive Order 11246. Besides these arrangements and important to their success, a clear channel from contract compliance personnel to policy-level officials is needed to prevent unsympathetic contract administrators from impairing the program.

While administrative structure is important, these issues must not be blown out of proportion. The research for this report uncovered a number of instances in which "reorganizational roulette" has undermined the efforts of contract compliance specialists. This chapter discusses three cases in which contract compliance offices have been moved within Federal agencies on close to an annual basis. 57/ Some opponents of recent reorganizations have complained about the use of this technique as a device for frustrating the compliance program. That is to say, if it gets too hot, it gets moved. We can only make the point that while location within an agency is important to program effectiveness, every effort must be made to avoid frequent relocations of ongoing programs and the resulting administrative turbulence and demoralization of compliance personnel.

Finally, consideration must be given to compliance agency manpower levels and program coverage. The compliance programs of most agencies are restricted in the number of firms they can cover and the frequency of reviews because of limitations on the availability of personnel and funds. There are 268 more than half-time professional personnel for contract compliance in the various contracting agencies as of March 1967. If efforts are made (1) to institute new procedures to strengthen enforcement of the order, (2) to review regularly smaller contractors, and (3) to place greater emphasis on labor union compliance, a major increase in the number of professional personnel assigned more than half-time to contract compliance is clearly needed.

FOOTNOTES TO CHAPTER 4

1/ Executive Order 11246 is reprinted as Appendix B of this report.

2/ Executive Order 11246 also prohibits discrimination in Federal Government employment and provides machinery and authority for the Civil Service Commission to enforce these provisions.

3/ A ban against discrimination based on sex was added effective October 1968.

4/ See Table 4-1.

5/ United States Commission on Civil Rights, _1961 Report: Employment_, Book 3, p. 10. Describing the work of the World War II defense industries fair employment practices committee established under this order, former chairman Malcolm Ross said, "its mild sanctions were seldom applied . . ." [The committee was] "concerned and diligent; they simply had not been given the tools to do the job." Malcolm Ross, "Some Wartime Lessons on Ending Job Discrimination," _The Washington Post_, July 28, 1963, p. E-3.

6/ _Ibid_., p. 12.

7/ Executive Order 10925 and 11114.

8/ One of the field research reports for this study, commenting on the failure to use the strong sanctions available under Executive Order 11246, described the program's application as "an almost classic case of a literally incredible weapon." Staff paper by James Carl Akins, unpublished.

9/ Harold C. Fleming, "Federal Executive and Civil Rights," _Daedalus_ (Fall 1965), Vol. 94, No. 4, p. 933.

10/ _Ibid_., p. 234.

11/ Statement of Edward C. Sylvester, Jr., Director of Office of Federal Contract Compliance, in _Report of 1967 Plans for Progress Fifth National Conference_ January 23-24, 1967, pp. 73-74. Emphasis added.

12/ _Ibid_.

13/ George Strauss, "How Management Views Its Race Relations Responsibilities," in Arthur M. Ross and Herbert Hill (eds.), _Employment, Race, and Poverty_. (Harcourt Brace & World, Inc., 1967), p. 277.

14/ _Employer's Guide to Equal Opportunity_ (The Potomac Institute, 1966), pp. 10, 14.

15/ _Equal Employment Opportunity Guide for Department of the Navy Contractors_, Office of the Assistant Secretary of the Navy (Installations & Logistics), August 1964, p. 8.

16/ Instructions for Contractors Regarding Affirmative Action Under Executive Order 11246, U. S. Department of Housing and Urban Development, July 1967, pp. 2-3. These eleven steps, although intended primarily for construction industry employers, are typical of affirmative actions suggested to employers by the contract compliance specialists interviewed in the field research.

17/ Interview, November 16, 1967.

18/ Edward C. Sylvester, Jr., in 1967 Plans for Progress Report, pp. 91-92.

19/ Department of Justice, p. 211. The St. Louis arch case involved refusal by union construction workers to work for a contractor who employed a non-union Negro plumbing subcontractor.

20/ The 1967 report of the U. S. Commission on Civil Rights, A Time to Listen . . . A Time to Act, contains a discussion (pp. 54-60) of Federal Government efforts "to provide entry into the skilled construction trades by requiring equal opportunity under Federal contracts." Citing Commission hearings in San Francisco, a highly organized area for labor unions,the report states,

> Union representatives were asked what they would do if a Federal contractor hired outside the hiring hall in order to get minority workers. The answer was unanimous -- the unions would enforce their contract. (p. 65)

21/ Executive Order 10925, Part I, Sec. 102(b).

22/ Welfare Appropriations for 1968, Hearings before a Subcommittee of the House Committee on Appropriations, 90 Cong., 1 sess., (1967), Pt. 1, p. 775.

23/ Fleming, p. 934

24/ Ibid.

25/ Interview, April 26, 1967.

26/ 1967 Plans for Progress Report, p. 75.

27/ Ibid., p. 77.

28/ Appropriations for 1968, Hearings before a Subcommittee of the House Committee on Appropriations, 90 Cong., 1 sess., (March 10, 1967), p. 783.

29/ See memorandum from Edward C. Sylvester, Jr., Director, Office of Federal Contract Compliance, to Heads of all agencies on "Pre-Award Procedure to Insure Compliance by Government Contractors with Equal Employment Opportunity Requirements," May 3, 1966, p. 1. (Emphasis added.)

30/ 32 Federal Register 7439, May 19, 1967.

31/ United States Department of Labor, "Operational Plan for Construction Compliance," March, 1967.

32/ Memorandum from V. G. Macaluso, on "Survey of Minority Group Participation Under the Cleveland Operational Plan for Construction Compliance with Executive Order 11246," November 15, 1967. OFCC officials have kept detailed records on all minorities hired under the Cleveland manning table approach. Their information includes educational background, previous job experience, and the referral process by which workers came to be employed on Federal or federally aided construction. As of November 15, 1967, data for 28 minority group craftsmen on the job indicated that 6 had already been union members, 11 were new journeymen working on a permit, 1 was accepted as a full journeyman with all union priveleges, 7 were new apprentices, and 3 were pre-apprentices. As for the recruitment, the largest number (9) were recruited directly by contractors.

The Cleveland plan also produced a major court case taken by the Justice Department under Title VII against Local #38 of the International Brotherhood of Electrical Workers (IBEW). (See Chapter 3, Table 1.)

33/ 268 F. Supp. 83. S. D. Ohio E. D. 1967 .

34/ Following the Ethridge decision, the NAACP launched a "nationwide campaign to halt all construction sponsored by the Federal and State governments unless Negroes were taken into building trades unions." (New York Times, August 3, 1967). Telegrams were sent to all State governors. Thus far, the campaign has been limited. However, the NAACP and other civil rights groups may eventually move on a broad basis to apply pressure to have the government do in other cities what was done in Cleveland.

35/ Remarks by Secretary of Labor Willard W. Wirtz to convention of Building and Construction Trades Department, AFL-CIO, November 29, 1967, p. 4. (Emphasis added.)

36/ The San Francisco plan is discussed in detail, including an appraisal of its limited results, in the U. S. Commission on Civil Rights hearings in San Francisco. Hearings before the United States Commission on Civil Rights, California, 1967, pp. 287 ff.

37/ The Budget of the United States Government, 1969, Appendix, p. 711.

38/ "Defense Contracts Compliance Programs," Memorandum from Deputy Secretary of Defense Cyrus R. Vance, March 21, 1967.

39/ Washington Post, June 11, 1967, p. A-5.

40/ Washington Post, June 19, 1967, p. A-18.

41/ See GSA Order ADM 5440.4, January 11, 1966.

42/ "General Services Administration Procurement Regulations," GSA Order ADM P2800.1, October 6, 1966. Identical to procedures proscribed under 1968 reorganization.

43/ The Department of Defense has jurisdiction over airlines and the Maritime Administration over maritime shipping companies.

44/ Speech by Paul A. Nagle, Deputy Contracts Compliance Officer, Post Office Department, at Equal Employment Opportunity Commission Affirmative Action Workshop sponsored by Joint Council Thirteen International Brotherhood of Teamsters, St. Louis, Missouri, March 9, 1967, pp. 3-6.

45/ Department of Labor and Health, Education, and Welfare Appropriations for 1968, Hearings before a Subcommittee of the House Committee on Appropriations, 90 Cong., 1 sess., (1967). p. 1279.

46/ Congressional Quarterly, May 19, 1967, p. 847.

47/ "Standards for a Merit System of Personnel Administration," Departments of Labor, Defense, and Health, Education, and Welfare, January 1963, p. 2.

48/ Two recent summary publications are available on the content and implementation of corporate equal employment policies. One is a two-volume study by the National Industrial Conference Board, Company Experience with Negro Employment, Studies in Personnel Policy, No. 201 (New York: 1966). The other is a volume of articles (several by corporate executives for industrial relations) edited by Professors Northrup and Rowan of the Wharton School of the University of Pennsylvania. See Herbert R. Northrup and Richard L. Rowan, The Negro and Employment Opportunity: Problems and Practices (University of Michigan Press: 1965).

49/ Strauss, p. 282.

50/ Strauss, p. 27.

51/ Charles E. Spahr, "The Report of the Chairman," Plans for Progress: August 1964 - December 1965, (Washington: 1966), p. 5.

52/ 1967 Plans for Progress Report, p. 71. Nonwhites constitute approximately 11 percent of the nation's total labor force.

53/ *Ibid.*, pp. 70-71. This may explain the selection of New York City white collar jobs as the subject of the EEOC's industry hearing January 15-17, 1968.

54/ National Industrial Conference Board, p. ii.

55/ Federal aid is available for private industry job creation programs for the disadvantaged. Several of these programs are discussed in Chapter 5 of this report.

56/ Gus Sedares, "The Building Trade: A Study in the Art of Vigorous Nonenforcement of the Law," New York CORE Rights Review, December 1964.

57/ The Department of Defense, Post Office, and the General Services Administration.

Chapter 5

MANPOWER PROGRAMS AND EQUAL JOB OPPORTUNITY

The two basic causes of inequality in employment for the members of minority groups are: (1) discrimination; and (2) disadvantages in terms of job preparation that prevent minorities from competing on an equal footing in the labor market. Elimination of the first cause, discrimination, is the goal of Title VII of the Civil Rights Act of 1964 and Executive Order 11246. But eliminating job discrimination, even if it were fully achieved, would not be enough. President Johnson, in a speech at Howard University on June 4, 1965, stressed the need to go beyond the enforcement of anti-discrimination laws and policies.

> You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'you are free to compete with all the others,' and still justly believe you have been completely fair. 1/

Federal manpower programs to deal with the second basic cause of labor market inequality, job-related disadvantages that limit the ability of minorities to compete in the labor market, are discussed in this chapter. 2/ The programs covered are significantly larger in staff and expenditures than the Equal Employment Opportunity Commission or contract compliance programs. Providing equal employment opportunity is one aspect of their function, rather than their primary and exclusive objective. Moreover, the manpower programs of the Federal Government in many cases involve Federal aid to State and local governments, as opposed to direct Federal operation.

It should be stressed that this chapter does not purport to assess the effectiveness of manpower programs of the Federal Government. 3/ It concentrates instead on the way in which equal employment opportunity as a policy objective is implemented under and as a part of these programs. Major attention is given to those programs which because of their size (as in the case of the employment service system, the Neighborhood Youth Corps, and the Manpower Development and Training Act, MDTA) or because of controversy about them (as in the case of apprenticeship) were found to be of greatest importance in the research for this study.

THE EMPLOYMENT SERVICE

The U. S. Employment Service (USES) established in 1933 and its affiliated State employment services are the operational centerpiece, to the extent that there is one, of the Federal Government's manpower system. The 2,000 local offices of State employment services provide job referral, counseling, and testing services and have a major role in administering the various job training and manpower development programs of the Federal Government. 4/ Nevertheless, within the Department of Labor, the USES is at a fairly low level in the bureaucracy. The USES is a component of the Bureau of Employment Security (BES) which itself is part of the Department's Manpower Administration. The BES is responsible at the national level for both the Federal-State unemployment insurance program and the State employment service system. State employment services are funded in entirety by the Federal Government from the Federal portion of the payroll tax on employers under the Federal Unemployment Insurance Tax Act.

Competitors of the Employment Service

Despite its long history and centrality in the labor market, the employment service has many competitors. In the private sector, most employers do their own recruiting, either at the gate or through such channels as newspaper ads, private employment services, and school and college recruitment programs. Within the government as well, the relative jurisdiction of the employment service has contracted in recent years. New programs and agencies separate from the service have been created to serve the disadvantaged. This is true even within the Department of Labor. The Department, perhaps in response to criticism of some state employment services as employer-oriented, has created new programs for the disadvantaged which operate quite independently of the service.

The concentrated employment program (CEP) is an illustration of a new program for the disadvantaged under Labor Department auspices which operates independently of the state employment services. It was established in March 1967 to provide intensive area-wide employment assistance for the disadvantaged in selected metropolitan areas. When he announced the program, Secretary of Labor W. Willard Wirtz indicated that it was being "established on top of the other programs which are already effective in that area." 5/ The fiscal 1969 budget projected a total of 146 CEP's (35 of them rural) serving over 200,000 persons at an estimated direct cost of $82 million. "These CEP's will bring together under one program such diverse services as remedial education, special counseling, work experience, institutional and on-the-job training, job placement, day care for dependent children, and health services." 6/ State employment service personnel can be used as supporting personnel for these special programs for the disadvantaged, but this is not necessarily done. Arrangements vary from city to city.

A second illustration of a new program to serve the chronically unemployed which operates independently of the employment service system is the so-called "JOBS" program (Job Opportunities in the Business Sector) announced by President Johnson in his January 23, 1968 message to Congress on manpower. This program is administered by the Labor Department in cooperation with the Commerce Department and the newly established National Alliance of Businessmen headed by Henry Ford II. The purpose of the JOBS program, as described by the President, is "to train the hard-core unemployed for work in private industry." The inital targets were 100,000 men and women on the job by June 1969 and 500,000 by June 1971. 7/ Under this program, individual contracts can be negotiated by the Labor Department's Manpower Administration with private employers to provide hard-core unemployed persons with comprehensive training and job preparation, including "remedial education, counseling, on-the-job training, and supportive services such as minor medical care and transportation where needed." 8/ The government pays the fixed unit costs, plus an incentive award for each trainee employed longer than 12 months. Again, the role of the employment service is limited. The Labor Department's description of the program states that the "primary source of the trainee will be the Concentrated Employment Program." 9/ The employment service is cited as a secondary source. "Should this primary source be unable to refer trainees, contractors shall obtain trainees from the State Employment Service." 10/

The most important new goverment agencies outside the Labor Department which compete with the state employment services are the local community action (or anti-poverty) agencies established in the Economic Opportunity Act of 1964. Where community action agencies are employment-oriented (many operate CEP's as described above), sharp rivalries can exist between the employment service and the much newer anti-poverty agencies. In one of the field cities for this study, the community action agency is almost entirely oriented toward job creation. Employment service officials were found to be worried about competition and overlap in what they said should be "our area."

Civil Rights Record of the Employment Service

In addition to criticism of the employment service system as employer-oriented, many fault the service on civil rights grounds. As recently as mid-1963, the Bureau of Employment Security was still endeavoring to have separate State employment service facilities (mainly in the South) eliminated. Robert C. Goodwin, Administrator of the Bureau, noted at a Senate hearing in June 1963 that two States still had physically separate offices for nonwhite applicants and that in 12 other cases there were racially separate divisions within local employment service offices. 11/ Five years earlier, the situation had been much worse; there were segregated employment service offices in 110 cities in 10 Southern States in 1958.

Although physically separate facilities no longer exist, the effects of the old segregated systems are believed to linger. Civil rights advocates continue to be critical of the employment service system. This was also true of a number of the respondents for this study who are or were employees of State employment services. One Negro State employment service staff member in a Southern State characterized existing discriminatory practices for referring job applicants as "the invisible law." He said that many employment service personnel in key positions operate under this law and that new staffers "get the message quickly." A former staff member in the North (also a Negro) attributed the persistence of discriminatory attitudes within the employment service to a fear of losing employers as clients. He said that although employees are supposed to report discriminatory job orders and refuse to accept them, this is not done.

Similarly, Whitney M. Young, Jr., Executive Director of the National Urban League, writing in 1964, criticized the employment service for failing to assist Negroes.

> The Employment Service has won no prizes for initiative in developing jobs for Negroes either with its clients or on its own staffs. As of 1963, only five of the Service's eighteen hundred office managers were Negroes. Because they suspect, justifiably, that they will not receive unbiased help, many professional and skilled Negroes have shunned the public employment services.
>
> The U. S. Employment Service is part of the Labor Department and is one example of the historical posture of that department in accommodating violations of its regulations and policies. 12/

Young's assessment pre-dates the 1964 Civil Rights Act. More recently, Professor Paul H. Nogren, in an article published in 1967, criticized the persistence of discriminatory job transactions on the part of public employment offices. He attributed this in part to "the USES's practice of allocating operating funds to these offices on the basis of their record of total placements, which actually encourages the acceptance and filling of discriminatory orders."13/ Herbert Hill, Labor Secretary of the NAACP, maintains that, although the outward manifestations of discrimination have been removed since 1964, many state employment service referral systems are still discriminatory. 14/ An NAACP-supported private lawsuit against the Ohio Bureau of Unemployment Compensation filed in October 1967 charged that,

> ...the O.B.U.C., the offices and agencies under its control, management and supervision, its agents, representatives and employees, have and continue to discriminate against Negroes in its job referral and placement services by accepting the registration of and referring Negroes to employers who discriminate against Negroes in their employment practices, by failing to refer Negroes to all employers registered with it and by referring Negroes to employers who restrict the hiring of Negroes to menial low-paying jobs. 15/

These and other allegations have not gone unnoticed within government. There has been considerable interest in reorganization of the employment service as a means of strengthening its capacity to assist the disadvantaged, particularly minorities. A fifteen-member Employment Service Task Force, appointed by the Secretary of Labor in December 1965 and headed by Dr. George Shultz of the University of Chicago, stated as follows on equal opportunity:

> The Employment Service has an obvious and important role to play in the achievement of a society where all workers have equal opportunities to compete effectively in building and selling their skills.
>
> The concept of 'equal opportunity' must apply in the first instance to the operations and personnel administration of the Employment Service itself. It is not sufficient, however, merely to reaffirm existing laws and policies as they relate to this agency. Instead, Employment Service personnel at every level must make a positive effort to understand and to cope with the special problems that confront members of racial minorities in the labor market. In addition, particular diligence should be exercised in helping these individuals to benefit from the various public and private programs that will enhance their employability. At the same time, the Employment Service can demonstrate its commitment to standards of equal opportunity by vigorously recruiting its own personnel from all groups of qualified persons. 16/

As its basic proposal, the Shultz task force recommended taking away the service's responsibility for administering unemployment insurance as is now done in a number of states (mostly smaller ones) and converting all local offices into "comprehensive manpower service centers." 17/

Enforcement of Nondiscrimination Requirements for the Employment Service System

In recent years, officials of the USES have taken a strong stand publicly on the enforcement of nondiscrimination laws and policies for the employment service system. Both Titles VI and VII of the Civil Rights Act of 1964 affect the service. Title VI prohibits discrimination under programs or activities receiving federal financial assistance. Title VII, which bans job discrimination by private employers and unions, specifically includes the practices of state employment services within the jurisdiction of the Equal Employment Opportunity Commission. 18/

Since the 1964 Act was passed, Labor Department and USES officials have stressed that its double ban against discrimination by the employment service is not a new policy. Nondiscrimination policy statements for the employment service date back to 1947. Prior to enactment of the 1964 Act, a member of the staff of the regional director for each of the eleven Bureau of Employment Security regions was assigned (usually part-time) to enforce this policy. As a rule, complaints of discrimination in the provision of services were handled informally. The outcome frequently was an invitation to the complainant to apply again with the hope expressed that "previous misunderstandings" could be worked out.

Under Title VI, however, a much more vigorous enforcement effort has been made. Title VI directs all Federal agencies that extend financial aid to issue regulations to enforce the nondiscrimination requirements of the 1964 statute. The Department of Labor's regulations under Title VI were issued in December 1964. 19/ Department officials emphasize that the issuance of regulations alone is not enough. The key is action to see see to it that the regulations are "in fact complied with."

> The language contained in Title VI clearly acknowledges that the mere publication of regulations banning discrimination would not be sufficient to end discrimination. The Act not only States that discrimination in federally financed programs shall be prohibited and that rules and regulations so stating shall be issued, but, more importantly, directs that steps shall be taken by the federal departments and agencies concerned to see that these rules and regulations are in fact complied with. 20/

The Office of Equal Opportunity in Manpower Programs

To administer the Title VI regulations adopted by the Labor Department, an Office of Equal Opportunity in Manpower Programs was established under the Assistant Secretary for Manpower in October 1965. Its major responsibilities are: (1) to exercise continuing civil rights oversight for the employment service system; (2) to investigate Title VI complaints for all manpower programs of the Labor Department, and (3) to conduct special equal opportunity reviews on request from departmental officials.

By far the largest proportion of the activities of the Office of Equal Opportunity in Manpower Programs involves the employment service. Officials of the unit estimate that the employment service accounts for upwards of 80 percent of its workload. In fiscal 1967, the equal opportunity office had a staff of twenty-seven persons and spent $365,000. It investigated 113 complaints (all of which also involved broad compliance reviews) and conducted 192 separate compliance reviews.

Relative to the total number of employment service offices in the nation, the coverage of the compliance unit is limited. It is estimated that in fiscal 1967 the unit reviewed approximately 6 percent of all local offices. 21/ The director of the unit, Arthur A. Chapin, noted at the fiscal 1968 appropriations hearings for the Labor Department that this problem of limited coverage seriously reduces program effectiveness. The figures given below by Chapin on the percentage of investigations in which discriminatory practices were found are particularly striking.

> Since the department has found discriminatory practices to exist in 75 to 80 percent of all programs investigated thus far, this can be interpreted to mean that a significant number of programs receiving Federal funds are in undiscovered noncompliance with the Civil Rights Act and the department's regulations. 22/

The most common type of violation found by the equal opportunity office is "under-coding" where employment service interviewers assign minority applicants lower skill ratings than their education, job record, or experience would otherwise indicate. Another typical violation is the failure of state employment services to investigate employers who consistently do not hire minority group applicants. USES regulations require that investigations be made in such cases and that the states refuse to serve discriminatory employers. Violations also occur in the testing and counseling areas where local employment offices do not provide these and related services to minorities on an equal basis. Any one of these violations can be grounds for a finding that an employment service office is in violation of Title VI.

The staff and operations of the equal opportunity office are centralized in Washington. This provides for uniformity. Another possible reason for centralizing operations is that it avoids situations in which investigators develop ties within a state or region that could prejudice their work. Most inspection visits to local employment service offices are made unannounced. On arrival, the investigator presents his credentials to the local office manager and at the same time begins his investigation. If he has come in response to a complaint, he reviews the charge with the complainant before appearing at the local office. His review generally includes: (1) an analysis of the office's Form 511 job applications and its job orders from employers; (2) a review of office procedures and personnel assignments; and (3) a community survey consisting of discussions with local leaders interested in minority group employment problems.

One of the main drawbacks for the compliance unit until recently was the lack of employment service data by race on the processing of job applicants. Under regulations effective August 1, 1967 instituting a new system for collecting racial and national origin data, the work of equal opportunity office investigators should be greatly facilitated. These regulations, first promised in May of 1966, have had an interesting history.

In the past, racial identification was done by some state employment services as a basis for discrimination. Special symbols or code numbers were used to designate minorities. They were then routinely referred to jobs set aside for them. For example, a white person with a high school education would be referred for a waiter's job, whereas a Negro or Mexican American with the same qualifications would be referred for a busboy or kitchen position. Because of their susceptibility to discriminatory uses, racial coding practices were vigorously opposed by civil rights groups and ultimately banned. Now, the tables are turned. It is argued by many civil rights proponents that race and national origin identification information _is_ necessary to assess whether and to what extent government agencies, including local employment service offices, are complying with federal equal opportunity policies and requirements.

The question of who should classify a person's race or national origin--the interviewer or interviewee--was one of the most difficult in developing the new USES regulations on racial and national origin identification. The resolution was to leave this decision up to the interviewer on the basis of "visual observation."

> The identification of an applicant's color and minority group shall be made by the interviewer solely on the basis of visual observation. To form a judgment as to whether he is a Negro, American Indian, or a member of a Spanish surname group, the interviewer will use his knowledge of the characteristics which are common to each particular group. 23/

USES instructions stress that race and national origin information is to be used for "_evaluation purposes only_." For the time being, it is not being collected in the states which have laws prohibiting such identification. 24/

Prior to the issuance of the new minority group identification regulations, investigators from the equal opportunity office had to rely primarily on names and addresses on application forms, plus follow-up interviews, as the basis for determining whether minorities were being discriminated against. Although the new regulations make it easier to conduct investigations, they do not affect the procedures of the compliance unit once a supposition of discrimination is established. The first step under current procedures is a meeting at the local employment service office. Suspected violations of Title VI are discussed and "corrective action" is requested. Requests for corrective action apply not only to the offices reviewed, but also to all other offices of the State agency.

Not all problems can be resolved by compliance unit investigators on the scene. When serious violations are found, a meeting is arranged with the director of the State employment service. Agreements reached at these meetings are put in writing, and it is requested that thirty days later the local office inform the Office of Equal Opportunity in Manpower Programs of its progress. When the equal opportunity office conducts follow-up reviews, it visits different offices in the city or State from those investigated initially. As of the middle of 1967, major State-level investigations had been held with thirty-six states. According to Arthur Chapin, there has been only one case involving a Northern State in which State officials were uncooperative. This case involved "real hard core resistance," but was ultimately said to be resolved by the Secretary's office after the Labor Department threatened to hold public hearings.

So far, no Federal aid has been withheld from any State employment service for Title VI noncompliance. This is attributed by the Bureau of Employment Security to the fact that the States have voluntarily agreed to actions recommended to eliminate discrimination found by the equal opportunity office. But, even if a particular State should refuse to go along, there are those who argue that withholding Federal funds is not an appropriate response to discrimination by State employment services. This line of argument holds that the people who suffer most are precisely those who need help. Employment services typically provide applicants for low-skilled, unstable, and generally less desirable jobs. Disproportionately large numbers of their clients are members of minority groups. Thus, cutting off funds, in effect, penalizes minorities for misdeeds done against them.

Equal Opportunity in Staffing

Besides equal opportunity in services rendered, the Bureau of Employment Security has placed emphasis recently on equality of opportunity in the internal staffing of State employment security agencies. A survey of the minority composition of State employment security agencies (both employment service and unemployment insurance personnel) through January 1967 revealed that,

> Problems exist in a number of States where the staff composition of agency units and local offices fails substantially to reflect the racial pattern of the general population of the area served. Moreover, in a significant number of agencies, minority group members are represented almost wholly in 'traditional' lower level jobs. 25/

Altogether, 12 percent of the employees of the employment security agencies surveyed were classified as minorities. By far the largest representation was in custodial services. Among custodial employees, 58.9 percent were members of minority groups. On the other hand, in managerial-supervisory positions, 5.5 percent were minorities (3.5 percent Negro) and in professional-technical jobs, 9.6 percent were minorities (7.3 percent Negro).

Following its survey, the BES in August 1967 set up new procedures to give greater stress to equal opportunity in the internal staffing of State employment security agencies. As part of the government's review procedure, a series of questions is now used to focus attention on the employment and deployment of minorities by State employment security agencies.

-- Has the agency developed and publicized a basic policy statement clearly affirming equal opportunity in all staffing and personnel actions? How have these objectives been made known to agency supervisors, employees, recruiting sources, and the general public? Are agency supervisors complying with the spirit as well as the letter of the policy?

-- Does current staffing data showing the number of minority group persons employed in the various job categories and agency units adequately reflect existing racial and ethnic patterns in the general population of the State and the skills and professional competence available in those racial and ethnic groups? Are minority group members concentrated mostly in traditional job groupings and locations?

-- How successful have the efforts of the merit system, local employment service offices, schools and colleges been in publicizing agency job opportunities and attracting applicants from minority groups? What evidence is available to document agency efforts on this aspect of job publicity and recruitment? Have other information media such as brochures, conferences with civil rights groups, posters, film strips, radio and TV spots been used to attract minority group applicants?

-- What specific efforts have been made to facilitate the upgrading of minority group employees as part of the agency's general staff development process? 26/

Changing the Role and Image of the U. S. Employment Service

At the same time that these strengthened civil rights enforcement and staffing efforts were being set in motion, changes were beginning to take place within the USES. A new Director with a strong commitment to equal opportunity in employment, Frank H. Cassell, was brought in from private industry in March 1966. Cassell's tenure, however, proved short when compared to the terms of his predecessors. He resigned in August 1967 and was replaced by his deputy, Charles E. Odel, a former official of the United Automobile Workers Union.

Under the leadership of Cassell and Odel, efforts to aid the disadvantaged, particularly minorities, have been accelerated. Rather than stressing services to employers (past budget justifications were cast in these terms), the emphasis in recent policy statements and regulations has been on serving the applicant. Cassell laid out "new ground rules" in the Fall of 1966.

> The groundrules have changed. Instead of how many people who were easy to place have passed through the portals, the question is how many of the hard to place did we reach; how many of them were made employable; how many got jobs; and how many stayed on these jobs and for how long?
>
> The whole organization is in a state of profound and exciting change. This springs from the social ferment in our society and from our efforts to respond effectively and meaningfully to the new needs and demands of the people of our nation.
>
> The employment service is central to the entire anti-poverty program. Indeed the whole effort falls apart if we are not able to furnish the final link of the chain, namely, a job. 27/

Although the emphasis is on the disadvantaged as a group, it is clear that the members of minority groups are to receive special help. Director Cassell defined "equal employment opportunity" in terms of going beyond enforcement of the 1964 Civil Rights Act.

> .....the term means making equal consideration for job opportunities a reality for all groups who in the past have not had an opportunity to be considered. It means more than mere conformity to the letter of the law.... What is needed is an affirmative and an aggressive approach. We must determine what is not being done, how to do better the things we are already doing, and look for new or additional means for carrying out our responsibilities in this area. 28/

Human Resources Development Program

As a central element of the new emphasis on the disadvantaged, the human resources development (HRD) program was inaugurated by the USES in 1966. Its objective is to provide intensive services for the chronically unemployed. These services are provided for the most part at youth opportunity centers run by state employment services. There were 127 youth employment centers in metropolitan areas throughout the country in the beginning of 1967. Recruitment under the human resources development program is done by employment service "out-reach" staff assigned in poverty areas. According to the 1967 Manpower Report of the President, recruits are then assisted by special counseling staffs at HRD centers.

> At the HRD centers, special counseling staff work individually with persons encouraged to come by the outreach staff and plan how to remove the obstacles to their employment. If personal difficulties such as living conditions, family or child-care problems, legal and credit questions, and problems of clothing or tools or transportation hamper employability, or if problems of physical or mental health stand in the way, the welfare and health services of the community are called on under cooperative arrangements. The plan for each individual may include, in any needed combination, basic education, other pretraining preparation, work-experience programs, and institutional, on-the-job, or apprenticeship training. For youth the plan may also involve referral to the Neighborhood Youth Corps or Job Corps. 29/

As is the case of all employment service activities, the human resources development program is implemented by the state agencies. There are no specific budget allocations or spending requirements for the program. Each state's employment service is directed to "include human resources development in its plan of operations, and to devote a major portion of its resources to that program." 30/

The HRD program was described in the 1968 appropriations justification for the USES as a "modest beginning." The justification statement linked the program directly to civil rights. It was described as having been designed to implement the recommendation of the June 1966 White House Conference on Civil Rights. The White House Conference urged establishment of "Human Resources Development Centers in areas of substantial Negro unemployment." 31/

It is too early as yet to appraise these and other efforts to redirect the tradition-bound administrative system of the employment service. Whether the new human resources development program can be accomplished without far-reaching organizational and personnel changes is the critical question. The evidence thus far indicates that it will not be possible to bring about dramatic changes from within. It has already been noted that as recently as 1967 discriminatory practices were found to exist for a very high proportion of the local employment service offices investigated by the Manpower Administration's civil rights compliance unit. Taking this as given, substantial difficulties can be anticipated in attempting to have these same offices not only eliminate discriminatory practices, but take affirmative actions as well.

The Role of Minority Group Representatives

A final area of employment service operations involving civil rights is the work of minority group representatives. There were 101 full-time professional staff members of state employment services designated as minority group representatives in fiscal 1967. Almost without exception, these staff members are Negro. They are not directly involved in placement interviews or job referrals. Their responsibility is:

> . . . to provide leadership in the planning and development of programs for serving minority groups, to provide functional supervision of local office activities, to evaluate the effectiveness of services to minorities, and to cultivate and maintain good working relationships and further cooperative efforts with such organizations as the Urban League, the NAACP, the League of United Latin-American Citizens, and other national, state and local organizations concerned with the social and economic problems of minorities. 32/

Although the work they do may be highly effective, there are critics of what one respondent termed the "Good Housekeeping Seal of Approval" status of minority group representatives. According to this view, the employment of minority group representatives is little more than a "sop" to show publicly that the employment service is concerned about the problems and needs of minorities. One Negro USES official interviewed in the field said that many minorities do not want to be singled out in this way for special treatment.

"They resent being artificially and falsely treated as minorities." The more important need, he asserted, is for the assignment of minority group personnel to referral positions for skilled job classifications. For example, if a Negro staff member is given the assigment of referring secretarial and clerical personnel, this would be regarded by members of minority groups as a much more genuine indication of the sincerity of the equal opportunity objectives of the service than the employment of minority group representatives.

JOB PREPARATION PROGRAMS

The term job preparation programs is used in this chapter to cover all employment related training and education programs of the federal government. Many of these programs are under the aegis of the U.S. Department of Labor and depend upon the state employment services for recruitment, placement, and follow-up activities. Two major job preparation programs completely outside the jurisdiction of the Labor Department are vocational education, which is administered by the Office of Education in the Department of Health, Education, and Welfare (HEW), and the Job Corps, which is administered by the Office of Economic Opportunity. The administration of still other job preparation programs is shared. For example, the responsibility for the institutional MDTA training program is divided between the Labor Department and HEW. The Labor Department is responsible for the recruitment of students, the determination of eligibility for training allowances, and the placement of trainees. HEW is responsible for faculty, facilities, and curricula.

Job Training Programs

It is in the area of job training that the proliferation of federal manpower programs is most apparent and most serious. 33/ Table 5-1 covers six major job training programs of the federal government, but it gives only

Summary Data on Major Job Training Programs, FY 1968

Program	New Obligational Authority Fiscal 1968 est. (in millions of dollars)	Individuals Served Fiscal 1968 est. (in thousands)	Date of Enactment	Administering Agency
Manpower Development and Training Act				
Institutional[1]	$ 246	129	1962	Manpower Administration, Dept. of Labor, Bureau of Adult and Vocational Education, Office of Education, Dept. of Health, Education, and Welfare
On-the-Job	182	186	1962	Bureau of Work-Training Programs, Manpower Administration, Dept. of Labor
Other MDTA	80	57		
Total	508	372		
Neighborhood Youth Corps	375	435	1964	Bureau of Work-Training Programs (delegate agency for Office of Economic Opportunity)
Job Corps	285	98	1964	Job Corps, Office of Economic Opportunity
New Careers (Nelson-Scheuer)	28	10	1965	Bureau of Work-Training Programs
Special Impact (Kennedy-Javits)	20	10	1966	Bureau of Work-Training Programs
Total	$1,216	925		

Source: The Budget, Fiscal 1969

[1] Includes work experience and training program for welfare recipients, veterans, and others.

part of the picture. It omits: (1) job training under the new concentrated employment program; (2) other training activities of community action agencies funded under the Economic Opportunity Act of 1964; (3) the new JOBS program to provide employment for the disadvantaged in private industry; (4) apprenticeship training; (5) training under the aegis of the new model cities program; and (6) Manpower Administration experiment and demonstration training programs. Because of space and resource limitations, this report concentrates on the two of the largest training programs in expenditures and trainees: the MDTA programs and the Neighborhood Youth Corps.

Two general comments about job training activities of the Federal Government must be made before considering specific programs. The administrative structure of many federally aided training programs presents obvious problems in terms of being able to control and target their operations. Federal aid is provided for a wide range of occupations and types of job training. It is frequently channeled through the States, although actual operations are in the hands of private sponsors or local agencies quite independent of the Federal and/or State officials who approve project applications. Under these conditions, it is difficult both to relate federally aided training programs to one another and to monitor their effectiveness. The second general point concerns the relevance for the disadvantaged of much of the training done under federally aided programs. The charge is often made that training is provided either for jobs that do not exist or for those that are very unstable or for other reasons are regarded as undesirable. For desirable jobs, it is held that training efforts are blocked by institutional barriers to the upward job mobility of minorities such as union rules (as in apprenticeship) and by the terms of labor-management agreements.

Manpower Development and Training Act of 1962. Through fiscal 1967, over 800,000 persons had received training under the institutional and on-the-job training (OJT) components of MDTA. Approximately 1,200 occupations are approved for MDTA training.

The responsibility for enforcing Title VI of the Civil Rights Act of 1964 for MDTA is split between the Labor Department and HEW. Administrative arrangements are intricate and highly fluid. The Labor Department is entirely responsible for civil rights enforcement for the on-the-job training or OJT program, which was administered from 1962 through 1967 by the Bureau of Apprenticeship and Training. Civil rights enforcement for this program is discussed in the section which follows on the apprenticeship programs and the role of the Bureau of Apprenticeship and Training. Institutional MDTA projects are covered for civil rights enforcement purposes by HEW and Labor. Before civil rights enforcement by HEW was centralized in the Office for Civil Rights, HEW's various component agencies had separate responsibilities in this area. This function is now performed by the regional office of the new HEW Office of Civil Rights. Approval for MDTA institutional projects as a general rule is withheld from local school districts found to be out of compliance with Title VI for purposes of the Elementary and Secondary

Education Act of 1965, the largest Federal aid program for local schools. But even before the Elementary and Secondary Education Act was passed, HEW had withheld approval for institutional MDTA projects on the grounds of racial discrimination. This was limited to the South in cases involving separate school districts, notably in Mississippi, Louisiana, and Alabama. Successful efforts were later made in these States to have other institutions (particularly Negro colleges) sponsor MDTA projects. 33a/

Besides HEW enforcement of nondiscrimination under Title VI, the Labor Department has attempted to use MDTA funds to achieve affirmative action objectives, primarily through the placement activities of State employment services. The Labor Department's objectives for the training of minorities under MDTA were put into precise form in fiscal 1967 under the then operative MDTA national planning system. Specific percentage targets for nonwhites were included in the planning guidelines. On an overall basis, 40 percent of MDTA training was to be directed to disadvantaged adults, 25 percent to disadvantaged youth, and 35 percent was to be "explicitly deployed against emerging skill shortages in occupations susceptible to MDTA training." 34/ Within the disadvantaged adult category, a sub-target was adopted that 33 percent of the trainees be nonwhite. This accounted for 31,000 out of a total of 94,000 adults for whom training was planned. In the disadvantaged youth category, 34 percent of the trainees were to be nonwhite, or 20,000 out of a total of 58,750. These national targets did not apply individually to each State, rather they were intended to be taken as the basis of program planning.

> While it is not expected that each State plan will reflect a distribution of training resources identical to the national targets, it is expected that State programs will follow the direction and emphasis of national objectives. Thus, a State plan may vary from the national targets in accordance with variations from national data in the composition of its unemployment and employment patterns. 35/

The 1967 planning system can be criticized on two grounds. Number one was a lack of follow-through to ascertain that the States made an appropriate effort under the various targets. Secondly, and even more importantly, the planning system was inconsistent with the format of government data for the MDTA programs in 1967. No data are available for 1967 on the numbers and characteristics of disadvantaged OJT trainees. Therefore, even assuming there was follow-up on the 1967 planning targets, there would have been no way to assess State performance in relation to the targets for MDTA-OJT.

Although there are no data for disadvantaged OJT trainees by race, available evidence indicates that the record of minority group participation under this program has been disappointing. 36/ One reason for this is that many trainees selected for OJT by employers are already on the pay-roll and are being upgraded. To the extent that minorities tend to be under-represented in the higher skilled job categories, this would understandably be reflected in their relatively low participation rates under OJT. Cumulative data from August 1962 through February 1967 show 35% of all MDTA insitutional trainees as nonwhite, compared to 19% for the OJT program. 37/ Data for calendar 1966 reflect an even greater discrepancy between the two programs in nonwhite participation--38.2% nonwhite under the institutional program and 15.4% under the OJT program. 38/

The fiscal 1967 targeting system, which at least in theory afforded a means for pressing the States on the inclusion of disadvantaged nonwhites under MDTA, was abandoned in March of 1967. It was replaced with certain features of the new planning system adopted in fiscal 1968, the Cooperative

Area Manpower Planning System, referred to as "CAMPS." CAMPS is an interagency manpower planning system which includes the following Federal agencies:

Manpower Administration
Office of Education (HEW)
Welfare Administration (HEW)
Vocational Rehabilitation Administration (HEW)
Office of Economic Opportunity
Economic Development Administration (Commerce)
Department of Housing and Urban Development

From the point of view of equal employment opportunity, the important point about CAMPS is that it did not set targets for MDTA trainees by race. The main reason given by Labor Department planners for dropping the nonwhite breakdown in fiscal 1968 was that the inclusion of small sub-categories was found to be "unworkable for planning purposes." Also given as a reason was the adoption of a number of new MDTA categories under the 1966 Manpower Development and Training Act amendments, thus making it necessary to simplify the planning process. 39/ The April 1967 interagency memorandum describing the CAMPS program contained only a single and vague reference to MDTA program goals for minority groups.

> Another major consideration is to assure that training opportunities are designed to accommodate and are made available to persons in the minority groups. In view of the disproportionately high jobless and poverty levels among minority groups, they should constitute a disproportionately high share of all MDTA trainees in each major program component. 40/

From the point of view of minority participation, the format of the original CAMPS planning system moves in the opposite direction from that of the 1967 MDTA national planning system. Perhaps the Congress and the public would balk at an approach which embodied firm MDTA minority group standards of participation. At the same time, it can be argued that the present limited Federal-State relationship, simply calling for special attention to the problems of minority groups, does not do enough to increase their participation, particularly in the OJT program. This dilemma is akin to that in the contract compliance area. Vagueness in defining goals may blunt criticism, but it can also reduce the potential for achieving results.

In fairness to those in government responsible broadly for manpower policies, it must be made clear that planning is not the only instrument for increasing minority group participation in government training programs. A number of other steps have been taken. Special contracts described below in the section on the Bureau of Apprenticeship have been entered into with civil rights and anti-poverty community organizations to arrange OJT projects. Beyond this effort, a major new program was inaugurated in early 1968 to increase the numbers of hard core unemployed persons in on-the-job training. This program, Job Opportunities in the Business Sector (JOBS), can involve the use of what are currently referred to as "MA-4" contracts between the Federal Government and major private employers to finance training and supportive services for the disadvantaged in private industry. 41/

Both organizationally and financially the older OJT program has been downgraded. The establishment of JOBS coincided with the reorganization of the Manpower Administration which transferred the OJT program out of the Bureau of Apprenticeship and Training and into the newer Bureau of Work-Training Programs. The net financial result was a requested 15 percent reduction in funding for fiscal 1969 under the OJT program, despite a stepped-up emphasis on the on-the-job training approach as indicated by a request of $251 million for the new Manpower Administration program for special on-the-job training contracts with employers.

The Neighborhood Youth Corps. Established in 1964 under the Economic Opportunity Act, the Neighborhood Youth Corps (NYC) provides paid public service work experience for young men and women, ages 14-22, from low-income families. The NYC program ushered in a new era of federally aided job programs. It is the first postwar program establishing on a broad basis a concept now being widely discussed, public service jobs for the poor.

Contrary to what might have been expected, the NYC program was not established as a limited effort to experiment with new job creating techniques.

It has been one of the largest Federal Government job programs right from the start. As shown in Table 5-1, the NYC program is larger than the MDTA program in total enrollment and just below it in total expenditures. Estimated fiscal 1968 enrollment was 435,000 at a cost of $375 million, or roughly $850 per enrollee.

The NYC program is divided into three parts: (1) in-school, (2) out-of-school, and (3) the special summer program. Enrollees typically receive $1.25 per hour. The biggest single group of enrollees in fiscal 1966 worked in schools (44.6 percent). State and local governments employed another 24.5 percent and community action agencies 19.3 percent. 42/

The formal structure of the MDTA and NYC programs is quite different. MDTA involves formula-type allocations to the States for the institutional program and individual or small group contracts with employers for OJT trainees. NYC, on the other hand, involves direct project grants to the sponsoring agencies. Yet, actual administrative procedures under the two programs are similar. In all cases, final approval is given on an individual project basis by the relevant Federal agency. Likewise, State employment services are central to the operations of both programs. They are responsible for referring applicants and providing various follow-up services for MDTA and NYC enrollees.

The essential differences between MDTA and NYC are qualitative, rather than procedural. NYC is a new program and its leadership in the Labor Department's Bureau of Work-Training Programs is strongly committed to equal opportunity. On the other hand, the Bureau of Employment Security and the Bureau of Apprenticeship and Training, which up until recently had the major administrative responsibilities in the Labor Department for the MDTA programs, are both old-line agencies. Officials in these agencies are much less receptive than NYC officials to the requirements of Title VI and the spirit of recent Departmental policies on the promotion of affirmative actions for minorities in the manpower field. 43/

The contrast between the equal opportunity components of the MDTA and NYC programs was portrayed as striking by civil rights leaders interviewed for this study. In one of the mail questionnaires, an NAACP official compared "the good jobs done with available funds" under NYC with what he referred to as the "bigotry, incompetence, and inertia of the employment service [and the] guile in the Labor Department's Bureau of Apprenticeship and Training, which is essentially a rest home for retired craft union officials." 44/

Statistics on nonwhite participation in the MDTA and NYC programs tend to support the distinction on civil rights grounds between the two. In 1966, 47.2 percent of all NYC enrollees were nonwhite. 45/ This compares with 38.2 percent for the MDTA institutional program and 15.4 percent for MDTA on-the-job training.

The NYC program does not have specific planning guidelines for minority groups as under the MDTA national planning system for fiscal 1967. Nevertheless, its policy pronouncements and instructions to field staff are emphatic on the subject of equal opportunity. The NYC Program Manual states as follows:

> The policy of the Neighborhood Youth Corps requires that there be positive and continuous action on the parts of field personnel and sponsors to insure that every effort is made to provide every citizen with the equal opportunity for participation in, and receipt of, all benefits which may be derived from an NYC project. 46/

Information for potential enrollees likewise emphasizes equal opportunity. Recruitment literature is available in both English and Spanish. The most widely distributed recruitment pamphlet, Pogo: Welcome to the Beginning, by Walt Kelly, states on the back cover:

> There can be no discrimination in the Neighborhood Youth Corps. It doesn't matter who you are, where you come from, or what your beliefs are. You get equal treatment in the NYC.

> If you are treated differently, talk to your supervisor, your sponsor, or write to the NYC office nearest your home, or to the Director, Neighborhood Youth Corps, U.S. Department of Labor, Washington, D. C. 47/

The same concern for equal opportunity applies to other program publicity. A 1960 biographical statement on Jack Howard, formerly Director of the Neighborhood Youth Corps, leads off with a strong statement on integration under the NYC program.

> During the past two years, Jack Howard, the 42-year-old administrator of the Neighborhood Youth Corps has quietly and effectively created what is probably the most effectively integrated establishment within the Federal Government.
>
> With little fanfare, and with attention centered on the program of the Neighborhood Youth Corps, Howard has actively practiced what the government has preached. 48/

NYC publicity also stresses the racial composition of the NYC staff. As of March of 1966, 46 percent of all staff positions were said to be held by members of minority groups. "Of the thirty-five upper level professionals (grades GS-14 through GS-18) assigned to Washington and the seven regional offices, eleven or 32 percent are minority group personnel." 49/ These figures are in sharp contrast to those cited above for state employment security agencies.

In sum, the NYC, a new program, has been much more active in promoting equal opportunity than the older MDTA programs. 50/ The same distinction between the civil rights records of old and new programs was found to apply to other job preparation programs of the Federal Government. NYC is not the only relatively new job program with a good civil rights record. The Job Corps was described by many field research respondents in similar terms. The same applies for the new careers and special impact programs. (See Table 5-1.) This distinction between old and new programs is important in signifying the need for a strong civil rights commitment at the top under federally aided job programs. The section which follows on the Bureau of Apprenticeship and Training provides strong support for this conclusion.

Apprenticeship Training

Apprenticeship systems are combined on-the-job and related instruction programs, typically with a four-year curriculum, through which workers acquire journeyman status in skilled crafts or trades. The 1966 total of 85,000 newly indentured apprentices is less than 10 percent of the number of enrollees in 1968 in the Federal Government training programs included in Table 5-1. 51/ But the political importance of apprenticeship training is disproportionate to the number of participants. Apprenticeship activities of the Federal Government are unquestionably the most controversial of all the programs treated in this chapter.

TABLE 5-2

Registered Apprentices by Selected Trades, 1965

Trades	New Registrations and Reinstatements	Completions	In Training at the End of Year
Construction	41,379	16,201	114,932
Metalworking	14,032	3,770	34,099
Printing	2,587	1,565	11,682
Total, all trades [a]	68,507	24,917	183,955

Source: Manpower Report of the President and a Report on Manpower Requirements, Resources, Utilization and Training, 1967, p. 280.

[a] Includes miscellaneous trades, not shown separately.

The main reasons for the sharp controversy surrounding equal employment opporutnity in the field of apprenticeship are the relatively small number of minority group apprentices and the practices of craft union exclusion which underlie these statistics. U. S. Census Bureau figures indicate that Negroes accounted for 2.5 percent of apprectices in the labor force in 1960. 52/ Other studies for selected areas and trades reveal similarly low-level minority group participation in apprenticeship as compared to their representation in the labor force as a whole (10.6 percent nonwhites in 1960). One problem in working with the data is that efforts to increase minority group participation in apprenticeship are very recent. The following table, while still indicating small numbers of minorities, reflects increased minority group participation in apprenticeship for selected cities and trades. The picture as a whole, however, is still far from encouraging. This is particularly true of the more highly skilled trades; for example, machinist, ironworker, plumber, and carpenter.

TABLE 5-3

Total Minority Group Participation
in Registered Apprenticeship Programs
for Selected Cities
June 30, 1967

City	Total Apprentices	Total Minority Group Apprentices
Atlanta	1388	191
Baltimore	1007	68
Chicago	2012	91
Cincinnati	639	23
Dallas	548	48
Houston	1235	92
Miami	602	3
New Orleans	521	167
Pittsburgh	883	44
Washington, D. C.[a]	1046	220

Source: U. S. Department of Labor, Bureau of Apprenticeship and Training, Status Report data.

[a] Construction trades only. Other trades not available

Table 5-4 presents breakdowns of minority apprentices by trade for each of the nine cities above. The trades included either are large in terms of the total number of apprentices, or there is a relatively high proportion of minorities even though the trade may be a small one. One-third of the trades listed show no minority apprentices. The largest numbers of minorities are in the less desirable trades (e.g. cement mason, roofers, and plasterers). To illustrate, New Orleans, which has the highest percentage of minority apprentices in Table 5-3, had 56 of its minority apprentices in the cement trades, by far the largest category of minority apprentices for the city.

The Federal Government first became involved in apprenticeship under the National Apprenticeship Act of 1937, which set standards of apprenticeship training. 53/ Under the statute, the Labor Department's Bureau of Apprenticeship and Training (hereafter referred to as the BAT) registers, or supervises the State registration of, apprenticeship programs which meet prescribed standards. Major apprenticeship standards now in effect cover: (1) training while on the job; (2) related instruction, a minimum of 144 hours per year is normally considered necessary ; (3) apprentice supervision; and (4) program evaluation systems and procedures.

The registration of apprenticeship programs which meet Federal standards carries few perquisites. . There is no direct Federal aid for registered programs, although indirect Federal aid is often provided for the related instruction of apprentices conducted in public school facilities. In some cases, participation in a registered program is a basis for draft deferment. Participation in a registered program is required to pay the lower rates permitted for apprentices on Federal and federally assisted construction projects under the Davis-Bacon Act of 1931. There are also prestige considerations involved. Apprentices in registered programs receive a certificate from the BAT upon completion.

TABLE 5-4

Minority Group Apprentices for Selected Trades by City June 30, 1967

ATLANTA

Trade	Total Apprentices	Minority Group Apprentices
Bricklayer	79	15
Carman (Railroad)	21	10
Carpenter	101	0
Electrician	174	0
Ironworker	66	10
Lather	43	28
Machinist	16	2
Painter	177	14
Plasterer	42	31
Plumber & Pipefitter	145	0
Pressman	62	0
Printer	74	0
Roofer	65	47
Sheet Metal Worker	89	1
Tool & Die Worker	28	0
Sprinkler Fitter	143	0

BALTIMORE

Trade	Total Apprentices	Minority Group Apprentices
Auto Mechanic	48	1
Bricklayer	95	10
Cabinet Maker	21	5
Carpenter	90	15
Cement Finisher	38	16
Ironworker	67	0
Machinist	71	2
Painter	36	0
Plumber & Pipefitter	45	1
Printer	98	0
Sheet Metal Worker	54	0
Steamfitter	97	4
Tool & Die Worker	41	0

TABLE 5-4 (cont'd.)

CHICAGO

Trade	Total Apprentices	Minority Group Apprentices
Auto Mechanic	38	1
Bricklayer	76	16
Cement Masons	81	16
Machinists	178	2
Pipefitter	380	3
Plumber	266	11
Sheet Metal Worker	312	16
Sprinkler Fitter	63	1
Tool & Die Worker	342	9

CINCINNATI

Trade	Total Apprentices	Minority Group Apprentices
Asbestos Worker	24	0
Cement Mason	21	16
Compositor	33	0
Feeder	41	0
Ironworker--Construction	29	0
Offset Pressman	38	0
Painter	27	0
Plumber & Pipefitter	160	3
Sprinkler Fitter	51	0
Stripper	30	1

DALLAS

Trade	Total Apprentices	Minority Group Apprentices
Bricklayer	24	1
Carpenter	127	5
Cement Mason	33	0
Electrician	99	5
Ironworker	42	2
Machinist	75	2
Painter	40	6
Sheet Metal Worker	40	1
Tool & Die Worker	11	2

TABLE 5-4 (cont'd.)

HOUSTON

Trade	Total Apprentices	Minority Group Apprentices
Auto Mechanic	13	6
Boilermaker	98	3
Cement Masons	11	5
Glazier	13	2
Machinists	132	16
Painter	50	6
Pipefitter	345	11

MIAMI

Trade	Total Apprentices	Minority Group Apprentices
Aircraft Mechanic	111	0
Bricklayer	22	0
Electrician	111	0
Ironworker	76	0
Lather	20	0
Painter & Decorator	44	0
Plumber	74	0
Roofer	22	3
Sheet Metal Worker	81	0

NEW ORLEANS

Trade	Total Apprentices	Minority Group Apprentices
Boilermaker	22	0
Bricklayer	37	34
Carpenter	236	29
Cement Mason	58	56
Lather	19	8
Millwright	16	2
Piledriver	16	8
Plasterer	14	13
Sheet Metal Worker	50	4
Structural Steel Worker	38	7

TABLE 5-4 (cont'd.)

PITTSBURGH

Trade	Total Apprentices	Minority Group Apprentices
Auto Body Repairman	43	3
Auto Mechanic	66	7
Bricklayer	35	0
Cement Mason	28	4
Construction Carpenter	70	9
Construction Electrician	79	0
Operating Engineer	48	2
Plumber	68	2
Printer	31	0
Sheet Metal Worker (Construction)	84	4
Steamfitter	28	0
Structural Ironworker	61	0

WASHINGTON

Trade	Total Apprentices	Minority Group Apprentices
Bricklayer	147	84
Carpenter	282	53
Cement Mason	40	28
Electrician	190	10
Ironworker	38	6
Lather	14	0
Painter-Decorator	16	2
Plasterer	6	2
Plumber, or pipefitter	430	28
Reinforcing Rodmen	24	1
Sheet Metal Worker	110	6

Source: U. S. Department of Labor, Bureau of Apprenticeship and Training.

Although some or all of these factors may add up to the necessity for a given apprenticeship program being registered with the BAT or the State, there are many cases in which registration is not regarded as necessary. Thus, some officials of the Federal Government (notably in the BAT) maintain that the present system relying on de-registration as the principal civil rights sanction in the apprenticeship field is a mistake. They argue that in many cases pressures to increase minority group participation keyed to the threat to de-register are likely to be ignored. Therefore, other sanctions should be used to bring apprentice program sponsors into compliance with Federal equal opportunity standards.

Besides the enforcement of civil rights regulations through de-registration, other forms of Federal leverage are available to increase minority group participation in apprenticeship. One obvious means is the enforcement of Title VII of the Civil Rights Act of 1964 which applies to all apprenticeship training sponsors, registered or not. The same is true, although in a less direct way, of Executive Order 11246. Federal contractors who participate in closed apprenticeship programs are in violation of the order. Both Title VII and Executive Order 11246 have been used lately and with notable successes in opening apprenticeship programs. In many of the cases taken by the Attorney General under Title VII, the defendants have been unions and the selection of apprentices has been one of the key points at issue. Likewise, one of the main objectives of the four special area programs for contract compliance under Executive Order 11246 has been increasing minority group participation in apprenticeship.

Another available form of Federal leverage which thus far has not been applied is to prevent the use of federally aided facilities for the related instruction of apprentices in programs found to discriminate against minorities, or which fail to take the steps required under the equal opportunity in apprenticeship regulations. Sponsors of apprenticeship programs often make arrangements with local public schools to use their vocational education facilities for related instruction purposes. 54/ In fiscal 1966, there were 63,734 apprentices in related instruction in schools which received federal aid for vocational education. 55/ Federal aid for vocational education is administered through the states. Some local school districts (e.g. Detroit and Philadelphia) have prohibited the use of public schools for the related instruction of apprentices where the sponsoring agency does not have a satisfactory equal opportunity position and record. The federal government, however, has not taken steps to use this leverage on a general basis as a means of bringing about civil rights compliance in apprenticeship.

BAT Civil Rights Enforcement. Despite the fact that de-registration is regarded by some government officials as an unsatisfactory sanction, the threat of de-registration is used as the principal instrument of the BAT to enforce nondiscrimination in apprenticeship. The regulations prohibiting discrimination under federally registered apprenticeship programs pre-date Title VI. They were issued in December 1963 based on authority granted under the National Apprenticeship Act of 1937 and embodying the following standards:

> a. The selection of apprentices on the basis of qualifications alone, in accordance with objective standards which permit review after full and fair opportunity for application, unless the selections otherwise made would themselves demonstrate that there is equality of opportunity.
>
> b. The taking of whatever steps are necessary, in acting upon application lists developed prior to this time, to remove the effects of previous practices under which discriminatory patterns of employment may have resulted.
>
> c. Nondiscrimination in all phases of apprenticeship and employment during apprenticeship after selections are made. 56/

Thirty-one States and jurisdictions with apprenticeship agencies that register programs under agreements with the BAT have adopted plans conforming to the 1963 equal opportunity regulations. Sponsors of registered programs are subject to review by the BAT or the State apprenticeship agency to determine whether they are operating in accordance with the regulations. The BAT "Field Compliance Review Report" for equal opportunity consists of a nine-item check list. Sample items are:

- -- Selection standards, ranking system and procedures in use meet requirement of Title 29, CFR 30.
- -- Adequate records of selection actions are available for review and provision made for retention for at least two (2) years.
- -- Information on apprenticeship opportunities has been publicly disseminated and a substantial period of time allowed for applicants to apply . . . (Include statement as to method used to disseminate information.)
- -- Ethnic composition demonstrates equality of opportunity. (Include statement as to toal number of apprentices and number of minority.)
- -- Program contains nondiscrimination clause. (Include copy of clause.)

Both government and civil rights group respondents interviewed in the field research indicated skepticism about the effectiveness of the BAT compliance review process for civil rights. The belief that the Bureau is basically unsympathetic to new civil rights policy directions is widespread. One Labor Department official in Washington working in the civil rights area said that BAT civil rights reviews are based primarily on information obtained by telephone and that there is rarely any detailed on the scene investigation by BAT or State field personnel. His view was corroborated for the State of Ohio in the following exchange at the April 1966 hearings of the U. S. Commission on Civil Rights in Cleveland.

> Commissioner Frankie M. Freeman. And as a Federal employee with the responsibility for administering a Federal program, will you tell this Commission what you think you should do to find out whether the apprentice program is operated fairly or not?
>
> Mr. Oscar R. Poole. [Senior Representative, Bureau of Apprenticeship and Training] It would be our function in accordance with the Ohio State Council--being a designate of theirs--to investigate or review these programs which would be in question and recommend or decide what should be the activity to be taken, if it is felt that they are not selecting according to the selection procedure that they have approved.
>
> Commissioner Freeman. But you haven't done that?
>
> Mr. Poole. This has not been done. 57/

Similar observations were reported in the study of Negro Participation in Apprenticeship Programs done for the Department of Labor by F. Ray Marshall and Vernon M. Briggs, Jr.

> There is a prevailing belief that a major deterrent to implementing the nondiscrimination standards is the fact that the BAT and the state apprenticeship agencies are not sympathetic to the enforcement of such policies. It is argued that the BAT is staffed mainly by ex-construction trades unionists who consider themselves to be 'fronts' for the unions rather than agents to carry out nondiscrimination policies. Others in the apprentice agencies consider antidiscrimination policies to be inconsistent with their main function of promoting apprenticeship programs. 58/

1967 Campaign to Enforce Apprenticeship Equal Opportunity Regulations. In the Spring of 1967, under a directive from Manpower Administrator Stanley Ruttenberg, the BAT inaugurated a new program to impose the de-registration sanction against apprenticeship program sponsors not yet in compliance with the Bureau's civil rights regulations. Letters were sent by the Bureau on March 10 to 636 apprenticeship program sponsors (the majority of which were in the building trades) adjudged by BAT field representatives as not yet in compliance with the 1963 regulations. They were given thirty days to comply voluntarily or risk de-registration. Program sponsors were told that if they did not choose to comply they could cancel their Federal registration, but that even if they did they would be subject to investigation, presumably by the EEOC or the Justice Department under Title VII of the 1964 Civil Rights Act. Hugh C. Murphy, Administrator of the BAT, set an April 10 deadline. 59/

Of the 636 sponsors notified, BAT officials reported that 508 took "immediate action" to revise their procedures and submit the required assurances to come into compliance. Twenty-four more came into compliance a month later. This left 104 apprenticeship program sponsors from whom no indication had been received by mid-summer 1967. The largest single category of non-respondents was plumbers, accounting for sixty-eight out of the 104.

The plumbers position presented an important test case. Peter T. Schoemann, President of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, told his locals to "disregard" the March 10 letter. 60/ The BAT appeared to go along with the plumbers at this point, declaring a truce pending efforts to work out an agreement. In an inter-agency memorandum April 20 (later distributed to the press by the NAACP),the Administrator of the BAT directed his regional directors "not[to] take any further action against program sponsors in the BAT states relative to the letters sent to them on compliance." 61/

President Schoeman said his main objection concerned selection procedures.

> This effort to tell us how we have to select apprentices, and that we have only one choice or class of choices, constitutes our most serious objection. This we find not only intolerable but also a misinterpretation of the regulations. 62/

Schoeman rejected the government's position on objective standards of selection as a "100-point civil service type placement system for selecting apprentices plus fifty-nine words of gobbledegook." 63/ He said he saw "nothing indecent about giving reasonable preference to sons of union members on apprenticeship entrance [or in a] contractor taking his own son into his shop in preference to a Negro boy." 64/

Confronted with this direct challenge and a threat to go to court if their programs were de-registered, the Labor Department, as already indicated, chose to "work out an agreement on the controversial parts of the Regulations, primarily the method of selection of apprentices." 65/ BAT officials maintained that this did not involve any compromise on the principle of equal employment opportunity, rather it was described as an attempt to reduce the complained-about inflexibility of the government's position on apprenticeship selection procedures.

The Spring 1967 truce in the controversy between the plumbers and the BAT produced tangible results. In the November 1967 issue of the UA Journal, President Schoemann wrote "Some Reflections on Thanksgiving " in which he reversed his earlier position. He discussed civil rights problems generally and took a strongly favorable stand on the promotion of minority group participation in apprenticeship through affirmative action.

> The United Association will in the months immediately ahead participate more actively in what is generally called affirmative action, meaning among other things direct efforts to notify minority group members of openings and even direct recruiting. I know that many members may find this course objectionable, feeling that they are doing all that can be expected, and are being eminently fair when they accord equality of opportunity to all applicants without regard to race or color or national origin. It is not my purpose to develop this subject here, but there will be additional advice and guidance on the subject in the future. In some cases affirmative action will consist in direct recruitment of the racial minorities; in other cases dissemination of information may be enough. There will be still other cases, where it ought to be painfully clear to any reasonable person that a local union or an apprenticeship committee has gone far out of the way in this regard, and that further direct aid to racial minorities would be unjust to other parties and destructive of human values. Then, nothing more may be required than maintenance of cordial relations with different groups in the community. 66/

The Labor Department took considerable satisfaction from Schoemann's change of mind. Shortly after his statement, Secretary Wirtz singled Schoemann out for praise in an address to the 54th Convention of the Building and Construction Trades Department, AFL-CIO. Wirtz characterized Schoemann's position as not just words and general principles, but reflective of "the specific problems of preserving and strengthening the apprenticeship systems, and about the ways of fitting 'the poor at the bottom of the ladder, particularly the minority racial groups' [the quote is from Schoemann's statement] into that system." 67/

Affirmative Action v. Quotas. The fundamental issue in the apprenticeship area is essentially the same as under the contract compliance program: Should specific standards of minority group representation be required or should principal reliance be placed on the affirmative action route? It can be argued that quotas are needed now to compensate for exclusionary practices in the past which prevented minority entry and still today discourage or deter minority group applicants for apprenticeship. On the other side, the labor movement speaks with one voice in opposition to preferences and quotas. The Cleveland manning table concept developed by the Office of Federal Contract Compliance to have specific numbers of minority workers in each of the skilled trades on Federal or federally assisted construction projects was strenuously opposed by labor. It was seen as potentially the first step in the direction of a government-wide effort to set minority group standards of representation for the skilled trades. Speaking at the 1967 convention of the Building and Construction Trades Department of the AFL-CIO, Donald Slaiman, Director of the Federation's Civil Rights Department, singled out the Cleveland experience for criticism. 68/ He called instead for reliance on affirmative action approaches which maintain the "standards and structures" of the apprenticeship system.

> We can maintain the standards and the structures in what is a terrific system in the apprenticeship system, not touching these at all, and having an increasing number of minority group youngsters come into the trades as competent and skilled workers and good union members. And that this is done not merely by regulation, by law, by preaching, but done by working on the subject in a sound way that trade unionists have so much to contribute to. 69/

As the main alternative to enforced standards for the representation of minority groups, union officials urge intensive pre-apprenticeship training. The model program in this area is that of the Workers' Defense League which originated in New York City and has spread, with Labor Department financial aid, to many other cities. The AFL-CIO's position on pre-apprenticeship training was stated as follows in September 1967.

> Recognizing the lack of knowledge on the part of both the community and a great portion of the labor movement, it is felt by our department that some well rounded educational program related to apprenticeship in the minority community should be instituted. . . .
>
> For instance, the Joint Apprenticeship Program of the Workers Defense League/A. Philip Randolph Educational Fund, is operating a program in the recruitment of minority youngsters for existing and available apprenticeship opportunities. . . .
>
> With these techniques and grants from the Department of Labor, the WDL, with the cooperation of the Building Trades Councils, has been successful, and is responsible for placing youngsters in apprenticeship programs in New York City, Buffalo, Westchester County (New Rochelle), Cleveland, and Newark, New Jersey. 70/

As of the time of writing this report, the government and the trade unions appeared to be in general agreement that, at least for the time being, the basically voluntary affirmative action approach should be emphasized in the apprenticeship field. An understanding to this effect was the subject of a public exchange of letters between Labor Secretary Wirtz and the Building and Construction Trades Department of the AFL-CIO. In a February 1, 1968 letter to the Secretary, the Building and Construction Trades Department strongly endorsed the principle of affirmative action. The Department promised "to foster, with the cooperation of appropriate management organizations":

> (a) Programs of recruitment of qualified applicants for apprenticeship from the Negro population and other minority groups, and
>
> (b) Programs for special attention to deficiencies affecting the full qualification of Negro and other minority group applicants, if such exist, and remedy the same if practical; 71/

The letter continued,

> . . . We offer this form of public-private cooperation as a means of recognizing and meeting social responsibilities in full and voluntary support of Government

> efforts to eliminate, once and for all, discrimination on the basis of race, creed, color, or national origin, with the endorsement of the department's executive council. 71a/

In his reply, Secretary Wirtz referred to his November 1967 speech at the convention of the Building Trades Department and said that their letter was "entirely in accordance with my remarks at your convention and I welcome your complete expression of cooperation with the thought that [the] best possible solutions may lie in voluntarism by the unions themselves, in cooperation with appropriate management organizations." 71b/ Wirtz also indicated that "in the light of these assurances" the BAT would continue to implement the civil rights regulations for apprenticeship "without change or amendment." 71c/ This was a major objective of the construction unions, namely that the BAT continue to administer the equal opportunity in apprenticeship regulations, despite a pending proposal that this responsibility be transferred to the Manpower Administrator.

Although the labor movement has lined up strongly behind the affirmative action approach, the controversy between the two points of view--enforced minority standards and reliance on affirmative actions--may not yet be over. No doubt, the ultimate decision will hinge on the ability of the less coercive, affirmative action route to achieve results. As experience is gained and data accumulated, those responsible for Federal civil rights policies and programs will have to decide whether and when the emphasis should be shifted from affirmative action to the politically more sensitive, but perhaps more effective, specific goal approach.

Apprenticeship Information Centers. One technique which the government itself has used to foster equal opportunity in apprenticeship on a voluntary basis involves apprenticeship information centers (AIC's) operated by the state employment services to disseminate information, primarily to minorities, about job opportunities in apprenticeship. BAT field representatives provide technical advice and assistance to the centers. The first apprenticeship information center was opened in Washington, D.C. in 1963. As of mid-1967, centers were located in or planned for twenty-three cities. Their role is described as follows:

> The centers are sponsored and financed by the employment service for the purpose of promoting the apprenticeship system and selection of applicants on an equal opportunity basis. Current information on job openings in the trades, entrance requirements, wages, application procedures, tests employed and other information are supplied to interested individuals to better acquaint them with trade requirements and aid them in obtaining apprenticeship opportunities. 72/

The record of the original Washington AIC in placing minorities has been a notable one. Nearly 60 percent of the placements in apprenticeship programs by the Washington center were of nonwhites for the three years, 1963-1966. 73/ Unlike Washington, however, other apprenticeship information centers do not maintain racial data. A BAT memo of January 23, 1967 took note of this deficiency. It concluded that the opening of apprentice opportunities to minority group applicants "is an intangible achievement which we have to date been unable to measure." 74/

The field research for this study included only one city which had an apprenticeship information center (Chicago). Thus, it is not possible here to draw conclusions about the way in which this affirmative action fits into the overall picture. Marshall and Briggs found widespread "suspicion of industry spokesmen, many of whom expressed the fear that AIC's were simply the beginning of Federal control of the apprentice selection process." 75/ However, the two authors described the AIC program as involving close ties between Federal officials and apprenticeship program sponsors.

> . . . BES and BAT teams attempted to sell the idea that the AIC was the best alternative facing the unions and that they should promote the establishment of centers in their areas in order to exercise some control over them. It was explained that the AIC's would really be performing a useful function for the unions by screening applicants for them; the AIC's union advocates felt that it was better

> for the centers to tell the Negro youngsters that they were not qualified than it was for the union leaders to incur the suspicion of discrimination by having to perform this disagreeable task. The unions also were told that the AIC's were getting qualified Negroes into apprentice programs whereas other training activities were producing Negroes to compete with those programs. It was also pointed out that the AIC was a part of the voluntary tradition of the American apprenticeship system, whereas alternatives to the AIC contemplated more direct government regulation. 76/

Industrial Training Advisors. A related BAT effort to promote equal opportunity in apprenticeship is the employment of industrial training advisors, which in fact, means civil rights consultants. At the end of fiscal 1967, the Bureau had eleven such advisors, all of whom are Negroes. The field research for this study included interviews with several industrial training advisors and BAT officials familiar with their work.

The industrial training advisor's role is similar to that of the minority group representative in the state employment services. He does not have direct-line operating responsibilities, but performs peripheral advisory and consulting duties. As would be expected, this limits his ability to affect the selection processes and operations of registered apprenticeship programs. Here again, Marshall and Briggs are skeptical.

> If its objective was to get Negroes into apprenticeship programs, the ITA's clearly have not been a success. Indeed, the deputy administrator of the BAT, who has general responsibility for this program, told us in December 1965, that he did not know of a single case where an industrial training advisor had been responsible for getting a Negro admitted to an apprentice program. While they apparently are dedicated people, most of the ITA's interviewed by this study seemed too often to lack sufficient independence to carry out their activities. A major problem seems to be the lack of support for this program by many of the BAT regional staffs. Regional directors too often seem to resent the ITA's or to think they are unnecessary and have not given them sufficient independence or resources with which to operate. 77/

Advisory Committee on Equal Opportunity in Apprenticeship and Training. In February 1963, Secretary of Labor Wirtz appointed the advisory committee on Equal Opportunity in Apprenticeship and Training. Among current members are representatives of the Associated General Contractors of America, American Can Company, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, International Union of Operating Engineers, International Association of Machinists and Aerospace Workers, National Association for the Advancement of Colored People, National Urban League, Catholic Church, Jewish Labor Committee of New York, and the Center for Human Relations Studies of New York University.

The advisory committee's history has involved several efforts by civil rights proponents on the committee to encourage the BAT to take new civil rights steps or intensify existing efforts. The Bureau in a number of these instances has taken issue with committee proposals or rejected them as unrealistic. While the advisory committee has provided a platform for civil rights organizations to be heard, it does not appear the committee is at all influential in Bureau policy-making.

BAT Administration of MDTA On-the-Job Training Program. The discussion of civil rights activities by the BAT has so far been limited to apprenticeship. Until December 19, 1967, the BAT also had responsibility for administering the MDTA on-the-job training (OJT) program. Financial assistance under this program is available for training costs under contract to employers and private organizations which hire and train unemployed or underemployed workers. 78/

It has already been noted that nonwhite participation in OJT has been disappointing. This is unfortunate because these combined work-training opportunities are especially desirable from the trainee's point of view. He is actually working at a job while receiving training and is almost always assured of continuing employment after his training is completed.

As one means of overcoming barriers to employer acceptance of nonwhites under the OJT program, the Manpower Administration and the BAT have in recent years awarded contracts under this program to the National Urban League and similarly oriented community organizations. These organizations subcontract with employers interested in promoting equal employment opportunity. According to Labor Department officials, OJT funds for these special contracts accounted for 24 percent of all OJT expenditures from August 1962 through July 1967. Unfortunately, from the point of view of the program's objectives, local Urban Leagues and community organizations have experienced considerable difficulty under this program in encouraging subcontracting employers to hire as high a proportion of minorities as they would like. Labor Department officials estimated in mid-1967 that 36 percent of the trainees in "OJT-Community Projects" were nonwhite. This is a poor record when set against the 1967 goal for nonwhites of one-third of all disadvantaged trainees. In effect, the special "OJT-Community Projects" have themselves only exceeded by a small margin the goal previously set for all disadvantaged trainees under the MDTA programs.

Civil rights enforcement for the OJT program, since it involves contracts, comes under Executive Order 11246. The language contained in OJT contracts on equal employment opportunity closely parallels that of the executive order.

> The contractor will not discriminate against any employer or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. 79/

BAT instructions to its field representatives required that the equal opportunity section of the contract (Section 9) be discussed in detail with the contractor and that follow-up visits be made to "monitor" this and other aspects of the program after fifteen days and again after forty-five days. There have, however, been no instances in which an OJT contract has been terminated or suspended on civil rights grounds. Nor do there appear to have been any special efforts by the BAT to see to it that the affirmative action obligations under OJT contracts were fulfilled. The one section on equal opportunity in the Bureau's brochure on the OJT program indicates that affirmative actions under Executive Order 11246 were not stressed as a matter of Bureau policy. The brochure used a question-answer format. The question was asked, "Are there quota systems involving minority-group trainees?" The answer does not mention affirmative action.

> Absolutely not. As a Federal Government contractor, however, you must hire, train, promote, transfer or assign positions on the basis of qualifications alone, without regard to race, color, creed, sex, or national origin as prescribed by Executive Order 10925 under regulations issued by the Secretary of Labor. There can be no differential lines of seniority, no designation at hiring which identify as to race, creed, color, sex, or national origin; and no separate facilities accommodations. 80/

The transfer of the MDTA-OJT program to the Bureau of Work-Training Programs in December 1967 is likely to result in a stronger emphasis than in the past on the participation of minorities. The 1969 budget states that "OJT contracts will be offered to firms located in ghettos and ghetto residents will be placed in OJT programs through the concentrated employment effort." 81/ Besides these changes, the establishment of the new JOBS program for the private sector puts the government in a much stronger position to place larger numbers of minorities in on-the-job training.

Equal Opportunity in Vocational Education

Since 1917 the Federal Government has provided financial assistance to the States for vocational education. Funds can be used for construction and specified services and activities under federally approved State plans. 82/ Enrollment in federally aided vocational education courses exceeded 6 million in fiscal 1966, including 430 thousand post-high school students. 83/ Vocational education courses of study include: business, clerical, home economics, retail trades, agricultural trades, printing, auto mechanics, other shop trades, optical mechanics, and at the post-secondary level, nursing, engineering technicians, and dental hygiene. Total Federal aid for vocational education in fiscal 1967 was $204 million, the third largest Federal grant-in-aid category for education. Without going into detail on the history of this program, it should be noted that the Vocational Education Act of 1963 significantly broadened the basis on which aid is provided. It gives much greater discretion than in the past as to the types of vocational instruction for which Federal funds can be used.

The vocational education program differs administratively from the MDTA and NYC programs in that there is no individual project approval. State boards of vocational education submit plans which are the basis for their receiving Federal matching funds for vocational education according to distribution formulas prescribed in law. Equal opportunity objectives are incorporated in this planning process. In addition to the requirements of Title VI of the Civil Rights Act of 1964, HEW regulations contain the following language on special classes for persons with "socioeconomic handicaps",

> Individuals will be admitted to and provided instruction inspecial classes for persons with special needs if such individuals have academic, socioeconomic, and other handicaps that have prevented or would prevent them from succeeding in the other vocational education programs and therefore require instruction which is especially designed to enable such individuals to develop competencies adequate for employment in a recognized occupation. 84/

Although the term, "socioeconomic handicaps," is used here in much the same way as other Federal agencies use the term, disadvantaged, race or national origin are nowhere mentioned as elements to take into account in the definition of handicapped persons.

Title VI compliance for vocational education is ascertained on a school district-wide basis. Personnel in the new HEW Office of Civil Rights determine for each school district in the nation whether it is in compliance with departmental equal education guidelines for elementary and secondary education. Where noncompliance is found, the district cannot receive Federal aid under Title I of the Elementary and Secondary Education Act of 1965. Furthermore, the State is obligated not to provide vocational education aid or any other State distributed Federal aid to the school district in question.

In deciding whether a given school district is in compliance with Title VI's ban against discrimination in federally assisted activities, the content and attendance patterns for vocational education are taken into account along with other civil rights criteria related to Federal grants-in-aid. Thus, vocational education programs can be important to the determination that a school district is out of compliance with Title VI. If, for example, Negroes receive vocational education for less desirable trades and in inferior schools compared to whites, this could be the basis for ruling that the school district as a whole is out of compliance. There have not, however, been any cases in which vocational education has been treated separately for civil rights purposes. This would require either a request to the State for the selective withholding of vocational education funds for the district in question or action by HEW to withhold the vocational education funds in dispute from the State. The enforcement of Title VI for vocational education is part and parcel of the broader issue of the implementation of Federal Government policies on school desegregation and is more closely related to this issue than to the equal employment opportunity policies covered in this study.

SUMMARY AND CONCLUSION

The manpower and job preparation programs covered in Chapter 5 represent a cross section of administrative approaches. The employment service is perhaps the most unique. One hundred percent of State costs are paid by the Federal Government under detailed regulations and involving item-by-item Federal concurrence on State employment service expenditures. The MDTA program operates under more typical Federal grant-in-aid arrangements. The on-the-job (OJT) component of the MDTA program is administered through individual Federal contracts. The institutional component involves formula allocations to the States, but also requires individual project approval. In effect, the institutional MDTA program is a hybrid between vocational education, a State administered formula grant-in-aid, and the Neighborhood Youth Corps (NYC), which is administered through direct project grants from the Federal Government to the sponsoring agency. Apprenticeship, the most controversial manpower program for civil rights purposes, is not a spending program at all. It is an instrument for promoting standards of apprenticeship training.

The Employment Service System

To a large extent, the workload of the federally aided, State administered employment services consists of serving minorities and filling entry-level, unskilled jobs. It is therefore particularly unfortunate that many State employment services lack a vigorous equal opportunity stance and a record which corresponds. Despite efforts to change it, the orientation of USES and State employment service officials too often remains that of serving the employer rather than the client. Furthermore, the complex administrative structure of the employment service system provides strategic advantages to those with older and more traditional outlooks who have a vested interest in undercutting new civil rights policy objectives.

One might easily argue that the employment service should be the centerpiece of the Nation's manpower programs in the inner city where minorities are concentrated. Yet, in many cities the service has been forced to give way, often after bitter fights, to new programs and agencies funded in major part by the Federal Government. Despite the human resources development program of the USES and similar efforts, the inability of men at the top of the employment service system to make these new policies stick suggests that a full-scale organizational overhaul of the employment service system is the only remedy.

The most widely discussed form of reorganization of the employment service is federalization. This approach is favored by the AFL-CIO.

> We urge that the employment service be federalized. Only through a truly national employment agency can the employment service meet the needs of workers and employers in our modern economy which transcends local and State boundaries and is national in scope. 85/

Likewise, the National Commission on Technology, Automation, and Economic Progress, chaired by Dr. Howard R. Bowen, President of the University of Iowa, proposed in February of 1966 that "the now federally financed but State-administered employment services be made wholly Federal." 86/

An alternative reorganization approach which is favored for purposes of this report is to de-centralize selectively the employment services. States with a demonstrated capacity would under this approach be given the authority and resources to administer their own manpower service systems on a comprehensive basis. The Federal Government would assess approved programs on the basis of performance criteria, including the achievement of equal opportunity objectives, in determining (say on a three year basis) whether a given State's program should continue to receive Federal aid. Large cities could also be allowed to run their own systems. This selective decentralization approach would encourage and utilize leadership capability in the manpower field at the State-local level and would permit approved programs to take into account the full range of the needs of applicants as well as the conditions in a particular labor market. It would also free Federal administrators to concentrate on the achievement of program improvements in States which, because of their small size and/or lack of experienced program administrators, are not in a position to apply for or receive permission to operate their own comprehensive manpower service systems.

Short of reorganization of this scale--whether by federalization or selective decentralization--the discussion of the employment services in this chapter suggests practical and immediate steps which can be taken to assure that equal opportunity objectives are fulfilled. The Labor Department approves State employment service budgets on an item-by-item basis. This offers unique opportunities for applying leverage through the withholding of funds for individual programs or activities in which State employment services do not give sufficient evidence of compliance with Federal equal opportunity standards and regulations. Steps should be taken, for instance, to increase the number of minorities in referral positions in State employment service agencies. In addition to exercising greater budget leverage, activities involving the employment service of the Manpower Administration's Office of Equal Opportunity should be expanded. The importance of this compliance program is indicated by the high rate of violations found in its investigations. The separate status of this unit outside of the Bureau of Employment Security and its use of Washington-based investigative personnel are features of the present Labor Department Title VI enforcement system which should be retained.

The Bureau of Apprenticeship and Training

The Bureau of Apprenticeship and Training (BAT) offers a clear illustration of an old-line agency that has been slow to move on the equal opportunity front. This is ironic when one notes that the main reason for the government's involvement in the apprenticeship field from the outset has been to see to it that the sponsors of apprenticeship programs live up to Federal standards. But the political reality over the years has been for the BAT to concentrate on technical standards of the trade and often to protect the interests of the sponsoring organizations (usually joint labor-management committees) in situations where their views and attitudes may be contrary to broader policy objectives of the Federal Government. Besides civil rights, other issues on which it has been alleged that apprenticeship program sponsors have differed with major government manpower policies are techniques of training and definitions of manpower needs for major skills.

In the light of this history, the responsibility for enforcement of civil rights regulations in apprenticeship should be assigned to the special civil rights compliance unit under the Manpower Administrator, the Office of Equal Opportunity in Manpower Programs. Marshall and Briggs concur in urging a different enforcement agency, although they do not specify which one.

> It is doubtful that the Bureau of Apprenticeship and Training's power over apprentice programs can be strengthened in such a way as to make it an effective enforcement agency for antidiscrimination measures. It is especially doubtful that de-registering apprentice programs, which is the BAT's main punitive power, would mean very much to unions or employers. The BAT also is limited by the fact that it has no control at all over unregistered apprentice programs. Moreover, the use of punitive powers probably would be incompatible with the BAT's traditional promotional activities, and too much confusion is created by having discrimination in apprenticeship subject to regulations by several states and federal agencies.
>
> We therefore recommend that all enforcement activities under 29 CFR 30 be removed from the BAT. Antidiscrimination agencies should concentrate on securing reliable

> information on apprenticeship programs and the extent of Negro participation in those programs. But since the implementation of equal apprenticeship opportunities must be based on an understanding of the apprenticeship system, we recommend close cooperation between antidiscrimination agencies and the BAT. 81/

Even with stronger enforcement efforts by the separate civil rights compliance unit, the dilemma in the apprenticeship area, as in contract compliance, is how should the existing equal opportunity requirements be enforced? Apprenticeship program registration is a quite different kind of public-private relationship than a government contract. It would no doubt be easier to utilize standards for the representation of minorities in the implementation of Executive Order 11246 than it would be to use this approach in relation to the registration of apprenticeship training programs. Contracts are a much more direct public-private relationship and are more valuable to the employer than registered status is to the sponsors of apprenticeship programs.

In those trades or areas of the country where adequate progress is not being made with affirmative action measures (e.g., pre-apprenticeship training, special counseling services, and technical assistance for program sponsors), a broader enforcement strategy should be adopted. De-registration ought not to be relied upon as the only or necessarily primary instrument for securing civil rights compliance in apprenticeship. The relevant Federal agencies should take whatever action is most likely to be effective, whether it be de-registration, filing suit under Title VII, passing over a contractor under Executive Order 11246, or withholding vocational education funds for related instruction. Such efforts would require close coordination on the part of several Federal agencies as well as additional manpower for the Justice Department, EEOC, and Department of Labor. Yet, even with relatively limited new resources for these agencies, important pay-offs could be achieved in opening up the highly symbolic apprenticeship field to all comers on an equal basis.

The Neighborhood Youth Corps

To illustrate the other side of the dichotomy between old and new manpower programs, the Neighborhood Youth Corps (NYC) was included in this chapter. The NYC is essentially a public service job program for youth. It is administered in the Labor Department by the Bureau of Work-Training Programs. The NYC program has a convincing posture and record on equal opportunity and is well-regarded even among the more militant civil rights advocates to whom most government programs are taboo. Although the NYC program is highly regarded from the point of view of civil rights, it may be that other kinds of manpower programs, where they can be made to work effectively, would achieve better long-run results for minorities. Obvious possibilities are the MDTA programs (both on-the-job and institutional), apprenticeship training, and the new JOBS program.

The MDTA Training Programs

The on-the-job training (OJT) component of MDTA was administered by the Bureau of Apprenticeship and Training (BAT) up until December 1967. Despite the letting of special contracts to community groups like the Urban League, the BAT's overall record on minority group participation under OJT has been disappointing. This record, plus the history of BAT reticence on civil rights matters generally, justifies the recent transfer of the OJT program out of the BAT and into the newer Bureau of Work-Training Programs. The OJT program is also important for purposes of this study because it offers a potentially productive tie-in between manpower programs and contract compliance and EEOC activities. Ideally, employers who want to employ minorities but need special skills not available in the minority community should be encouraged to set up in-plant training programs for which Federal assistance is available. Bringing together the employer and the necessary manpower program expertise for programs such as OJT-MDTA and JOBS s a logical function for contract compliance specialists and the EEOC.

In the institutional MDTA training program, the record on minority group participation is better than under OJT. However, the benefits of this program to the participant are ordinarily not as great because training and job placement are not as closely related as under OJT. Although it was of limited effect, the 1966-67 MDTA planning system which included specific planning targets for nonwhites was a considerably better vehicle for increasing minority group participation in the MDTA institutional program than the new CAMPS system as adopted in 1967. The CAMPS system eliminated the planning category for nonwhites and in so doing constitutes a step backwards. Measures should be taken to bring back into the planning process some appropriate method for giving weight to the special job-related disadvantages of minority groups. 88/ There is also a need for more systematic follow-up on these targets than was done in the past with the responsible state agencies and program sponsors, especially in those instances where there is known to be resistance to the equal employment policies and objectives, of the federal government.

New Program Directions

Recently, strong efforts have been made to provide new forms of training assistance in the private sector for the disadvantaged, particularly minorities, and to re-orient existing programs to this group. Whether private industry will respond as fully as envisioned under the new JOBS and the related "MA-4" program remains to be seen. If it does not, one possible answer, as President Johnson suggested December 19, 1967, is a substantial increase in public service job programs with the government as "employer of last resort." 89/

Whatever the eventual mix between public and private job programs, there is still the question of reconciling manpower programs with the antidiscrimination enforcement programs under Title VII of the Civil Rights Act of 1964 and

Executive Order 11246. The possibility always exists that anticipated results from new job creation efforts will be allowed to overshadow the enforcement of antidiscrimination policies for employment. A hint of such a view was made public in January 1968. An unnamed "high government official" was quoted as saying to newsmen that "the nation was approaching the end of the struggle to guarantee legal rights for minorities. The new battle is to secure rights of equality in education and opportunity." 90/ If this reflects a lower priority to equal job enforcement, as opposed to educational and job training programs, it overlooks important opportunities to relate manpower and equal job enforcement efforts to maximize their total impact. The relationships between enforcement programs to open more and better jobs for minorities and manpower programs to prepare minorities for these jobs are discussed in Chapter 6.

1/ "To Fulfill These Rights," June 4, 1965, Public Papers of the President 1965, Vol. II, p. 636.

2/ General education programs, although certainly relevant for the reduction of job inequality, are excluded from the scope of this study. The reasons are the obvious ones, viz. limited time resources. Nevertheless, it must be recognized that there are no discrete parts of the social environment. Employment, education, housing, community services, all are formative factors which in one degree or another contribute to a person's employability. The schools, in particular, are heavily involved in the business of job preparation. The focus of this study, however, is on employment and those Federal programs which are designed to open jobs for minorities, to prepare people for jobs, and to help them find them.

3/ For a useful summary appraisal of current Federal manpower programs, see Sar A. Levitan and Garth L. Mangum, Making Sense of Federal Manpower Policy, a joint publication of the Institute of Labor and Industrial Relations, University of Michigan-Wayne State University, and the National Manpower Policy Task Force, March 1967.

4/ In some states, employment service offices also administer unemployment insurance. The trend of late has been to have the employment service and unemployment insurance functions conducted in separate offices. A number of states, generally larger states, have completely separated these two activities.

5/ Statement of Secretary of Labor W. Willard Wirtz, Press Conference, March 15, 1967, p. 7.

6/ The Budget of the United States Government, Fiscal Year 1969, p. 144.

7/ The President's Message to Congress, "To Earn a Living: The Right of Every American," Jan. 23, 1968.

8/ Letter from Stanley H. Ruttenberg, Assistant Secretary and Manpower Administrator, U. S. Department of Labor to prospective corporate participants. These contracts are currently referred to in government alphabetise as the "MA-4" program.

9/ Memorandum, "Scope of Work," attachment to letter to prospective corporate participants in the "MA-3"program of government contracts for employers who hire and train the disadvantaged.

10/ Ibid.

11/ Arthur M. Ross and Herbert Hill, Employment, Race, and Poverty (Harcourt Brace & World, 1967), p. 550.

12/ Whitney M. Young, Jr., To Be Equal (McGraw-Hill, 1964), p. 87.

13/ Arthur M. Ross and Herbert Hill, Employment, Race, and Poverty (Harcourt, Brace & World, 1967), p. 550. Under a new "Plan of Service" USES budget concept, funds for state employment services are now apportioned on a basis which, it is explained, does not rely entirely on job referrals and/or placements. In a letter February 16, 1968, Robert C. Goodwin, Administrator of the Bureau of Employment Security, stated as follows in response to the question of whether funds are apportioned in the states on the basis of job referrals.

> Funds are allocated on the basis of the needs to be met and the services required to meet those needs rather than on the basis of the numbers of units of work to be performed and the time required to perform each unit . . . .
>
> Until fiscal year 1963, allocations were determined largely by the latter method, known as the workload-time factor basis for budgeting. Our experience demonstrated, however, that that method resulted in emphasis on workload accomplishment and service to the "easy to place" rather than on services needed by the "hard to place" who were seriously disadvantaged in finding suitable employment. [Emphasis added.]

14/ Interview with Herbert Hill, National Labor Director, NAACP, Dec. 14, 1967.

15/ United States District Court for the Southern District of Ohio, Civil Action File No. 67-323, Oct. 13, 1967; p. 5.

16/ Ibid, p. 243.

17/ Joint Hearings before the Subcommittee on Employment and Manpower of the Committee on Labor and Public Welfare, United States Senate, and the Select Subcommittee on Labor of the Committee on Education and Labor, House of Representatives, 89 Cong. 2 sess. Manpower Services Act of 1966 and Employment Service Act of 1966, p. 231 ff. Report also available in U. S. Department of Labor, Employment Service Review (February 1966).

18/ Complaints to the EEOC against state employment services have been relatively few. The Commission has not made any special effort to enforce Title VII for the employment service.

19/ Code of Federal Regulations (CFR), Title 29, Pt. 31. Under these regulations, every state employment service is required to submit a signed "Assurance of Compliance with Title VI," which embodies the major provisions of 29 CFR 31.

20/ Labor Appropriations for 1968, Hearings before a Subcommittee of the House Committee on Appropriations, 90 Cong. 1 sess., March 10, 1967, "Justification Material, Federal Contract Compliance and Civil Rights Program," p. 790.

21/ Ibid., p. 779.

22/ Percentages refer to investigations. Labor Appropriations for 1968, Hearings, p. 790.

23/ U. S. Employment Service Program Letter No. 2238, "Recording Race, Color, and National Origin of Applicants on Office Records," (June 23, 1967), p. 2.

24/ As of September 11, 1967, fourteen states had advised the Solicitor of the Department of Labor that they would not be able to comply with the requirements of Program Letter No. 2238 because of prohibitions in their state law. These states are: New Hampshire, Rhode Island, New Jersey, New York, Delaware, Pennsylvania, West Virginia, Ohio, Minnesota, Missouri, Colorado, New Mexico, Hawaii and Alaska.

25/ "Equal Opportunity in State Agency Staffing," U. S. Department of Labor, Personnel Series No. 56, Aug. 28, 1967, p. 1.

26/ Ibid., Attachment 2.

27/ "Management of the U. S. Employment Service," Speech delivered by Frank H. Cassell, Director, USES, Staff Meeting, Sept. 6, 1966, p. 1.

28/ U. S. Department of Labor, Employment Service Review, (August 1966), pp. 1-2.

29/ U. S. Department of Labor, Manpower Report of the President and A Report on Manpower Requirements, Resources, Utilization, and Training (April 1967) p. 49.

30/ Memorandum from Robert C. Goodwin, Administrator, Bureau of Employment Security, July 30, 1968.

31/ Report of the White House Conference, "To Fulfill These Rights," June 1-2, 1966, Washington, D. C., p. 16. Job recommendations were listed first in the Conference Report.

> No longer can access to a job or the acquisition of a job by Negroes be left to chance. Large scale and systematic efforts by employers, labor unions, and other community groups to provide and sustain a climate within which Negroes can get more and better jobs are necessary. To make these efforts effective, and to coordinate them with training, welfare, and other services, it is necessary to develop a new approach whereby local leadership can be mobilized for planning and action . . . Metropolitan Jobs Councils should be established in each major urban area with a substantial Negro population . . . . The Councils should develop and keep up-to-date a Metropolitan Human Resources Action Program for the community . . . The Councils should take positive steps to ensure that the business community, labor organizations, and government agencies assume maximum responsibility for expanding job opportunities for Negro workers. . . The Councils should assume leadership in the local implementation of a national year-round youth job placement program. . .

32/ Labor Appropriations for 1968, Hearings, p. 266.

33/ See Levitan and Mangum, Making Sense of Federal Manpower Policy, pp. 1-20.

33a/ For a discussion of the Labor Department's enforcement of Title VI as it applies to MDTA institutional training, see the section above on civil rights enforcement for the state employment services which are responsible for the recruitment and placement of trainees under this MDTA program.

34/ U. S. Department of Labor, "National MDTA Goals and Guidelines, Fiscal Year 1967" (in cooperation with the Department of Health, Education, and Welfare, Office of Economic Opportunity, and Department of Commerce), March 31, 1966, p. I-1.

35/ Ibid., p. I-2.

36/ Data for the MDTA institutional program in calendar 1966 indicate that during that 12 month period it fulfilled the one-third goal set for fiscal 1967 for minorities as a percentage of disadvantaged trainees. See Education and Training: Expanding the Choices, Fifth Annual Report of the Department of Health, Education, and Welfare (1967), p. 103.

37/ Data from U. S. Department of Labor, Manpower Administration, Office of Manpower Policy, Evaluation, and Research.

38/ Manpower Report of the President, April 1967, p. 278.

39/ New programs added in the 1966 Act are: (1) older-worker training, (2) part-time training, (3) separate basic education training, and (4) training in correctional institutions.

40/ Interagency Cooperative Issuance No. 3, "CAMPS National Planning Guidance, F. Y. 1968," April 7, 1967, p. II-43.

41/ The main difference between MDTA-OJT and "MA-4" contracts is that the former is limited to reimbursing employers for training costs, whereas the latter can include a wide range of support and service expenditures. The target population of the JOBS Programs, as stated in the President's 1968 manpower message, is "500,000 men and women who have never had jobs--or who face serious unemployment problems--living in the slums of our 50 largest cities." The President's message states that a substantial proportion of this group are Negroes, Mexican Americans, Puerto Ricans, or Indians.

42/ U. S. Department of Labor, America's Youth at Work, Neighborhood Youth Corps 1966 (June 1966), p. 4. The Neighborhood Youth Corps also places youngsters in private industry, called "Work Trainees in Industry" (WTI's).

43/ Through December 1967, the Bureau of Apprenticeship and Training was responsible for administering the OJT program. Under a reorganization of the Manpower Administration December 19, 1967, this program was transferred to the Bureau of Work-Training Programs. The transfer is discussed later in this chapter in connection with the role of the Bureau of Apprenticeship and Training.

44/ The tendency for the Bureau of Apprenticeship and Training to hire former craft union officials in key positions was widely criticized by proponents of civil rights.

45/ Manpower Report of the President, April 1967 , p. 279.

46/ "Compliance with the Civil Rights Act of 1964" in NYC Program Manual (1966), p. IV-1.

47/ Walt Kelly, Pogo: Welcome to the Beginning (U. S. Department of Labor: Neighborhood Youth Corps).

48/ U. S. Department of Labor, Neighborhood Youth Corps, "Jack Howard and the Neighborhood Youth Corps," (1966), p. 1.

49/ Ibid., pp. 2-3.

50/ This conclusion, however, should not be taken as a comparative indication of program effectiveness. Many criticize the NYC program. Field research interviews, for example, indicated concern about such problems as: (1) that there is a lack of relevance of NYC work experience to actual job opportunities; (2) that the out-of-school programs encourage youngsters to drop out of school; (3) that the in-school program often takes away from the classroom time of precisely the students who most need special academic work.

51/ U. S. Department of Labor, Bureau of Apprenticeship and Training, Bulletin No. 67-112, June 1, 1967.

52/ F. Ray Marshall and Verson M. Briggs, Jr., Negro Participation in Apprenticeship Programs, A Report to the Office of Manpower Policy, Evaluation, and Research, Manpower Administration, (U.S. Department of Labor, Dec. 1966), p. 48.

53/ See U. S. Department of Labor, Manpower Administration, Apprenticeship Past and Present, (1964), p. 27.

54/ Many joint labor-management apprenticeship committees contribute to local schools to pay part of the costs of related instruction. These funds are commonly used by the school district to pay its allotted matching share of Federal aid for vocational education. The Federal aid funds involved may or may not be covered by payments from apprentice program sponsors. Apprenticeship programs provide their own instructors.

55/ Data from HEW, Office of Education.

56/ 29 CFR 30.

57/ Hearings before the United States Commission on Civil Rights, Cleveland, Ohio, April 1-7, 1966, p. 486.

58/ Marshall and Briggs, p. 354.

59/ Hugh C. Murphy, "Compliance with Title 29 CFR 30 (BAT States Only)," Memorandum to BAT Regional Directors, February 24, 1967, p. 1.

60/ Labor Relations Reporter: Fair Employment Practices (Bureau of National Affairs, Inc., April 1967).

61/ Congressional Record, September 26, 1967, p. H12496.

62/ "Problems Arising from the Interpretation and Enforcement of 29 CFR Part 30," Position Paper of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Submitted to the U. S. Department of Labor, June 19, 1967, pp. 1-3.

63/ Ibid.

64/ Ibid.

65/ New York Times, June 18, 1967, p. 16.

66/ "Status Quo with Modifications" UA Journal, November 1967, Vol. LXXIX, No. 11, p. 57.

67/ Excerpts from remarks by Secretary of Labor W. Willard Wirtz to the 54th Convention, Building and Construction Trades Department, AFL-CIO, November 29, 1967, p. 3.

68/ Proceedings of the 54th Convention of the Building and Trades Department, AFL-CIO, 1967, December 1, 1967, p. 7.

69/ Ibid., pp. 7, 9-10.

70/ "Apprenticeship in the Skilled Trades," Comments by William E. Pollard, AFL-CIO Department of Civil Rights, before NAACP West Coast Regional Conference, September 22, 1967, pp. 1-2.

71/ New York Times, February 14, 1968, p. 23. Emphasis added.

71a/ Ibid. Emphasis added.

71b/ Ibid. Emphasis added.

71c/ Ibid.

72/ Labor Appropriations for 1968, Hearings, pp. 249-50

73/ U. S. Department of Labor, Fifty-Fourth Annual Report: 1966, pp. 41-42.

74/ "Summary of Apprenticeship Information Centers Activity Accomplishments -- Calendar 1966," Bureau of Apprenticeship and Training Memorandum, January 23, 1967, p. 6.

75/ Marshall and Briggs, p. 377.

76/ Ibid., pp. 377-378.

77/ Ibid., p. 369.

78/ Trainings costs include such items as instructor fees, materials used in training, and instructional supplies. In some cases, a training allowance is also paid directly to a trainee. In others, payments may be made to vocational schools for supplementary instruction See Table 5-1 for expenditures and trainee data under this program.

79/ U. S. Department of Labor, Form OJT-2, "Negotiated Cost-Reimbursement on the Job," Para. 9.

80/ U. S. Department of Labor, Manpower Administration, An Employer's Guide to On-the-Job Training under the Manpower Development and Training Act (June 1966), p. 9.

81/ Apprendix to the Budget for Fiscal Year 1969, p. 694.

82/ Specified services and activities include teacher training and supervision, program evaluation, special demonstration and experimental programs, development of instructional materials, and state administration.

83/ Manpower Report of the President, April 1967, p. 60.

84/ U. S. Department of Health, Education, and Welfare, Administration of Vocational Education, Rules and Regulations, Vocational Educational Bulletin No. 1, (1966), p. 17. Emphasis added.

85/ Joint Hearings before the Subcommittee on Employment and Manpower, Eighty-Ninth Congress, 2d Sess., p. 309.

86/ U. S. National Commission on Technology, Automation, and Economic Progress, Technology and the American Economy, Vol. I, February 1966, p. 111.

87/ Marshall and Briggs, pp. 424-25.

88/ A recent study of the racial distribution by occupation and placement experience of MDTA trainees was done for the U. S. Commission on Civil Rights. This study contains detail on MDTA trainees for the years 1964 and 1965 and indicates at several points that minorities are short-changed, even when they are included in the MDTA institutional program. (Give author and title or indicate here that study is unpublished.)

89/ President Johnson said in a year-end television interview, "I am going to call in the businessmen of America and say one of two things have to happen: You have to help me go out here and find jobs for these people, or we are going to have to find jobs in the Government for them and offer every one of them a job." Washington Post, Dec. 20, 1967, p. A12.

90/ Washington Post, Jan. 25, 1968, p. A6.

Chapter 6

THE FUTURE

The objective of the programs and activities of the Federal Government covered in this report is to eliminate job inequalities for members of minority groups in the private sector of the American economy. This objective, at least in principle, is a long-standing one. Variously stated, the nation's economic creed is that all Americans should have an equal opportunity to succeed in terms of their own particular talents and abilities. Yet, available data on the job status of minorities indicate that the reality falls far short of this ideal. To help close this gap, the Federal Government has adopted laws and presidential policies to deal with what are commonly regarded as the primary causes of job inequality in the American labor market--discrimination and job-related disadvantages disproportionately characteristic of minority groups.

Current government policies to achieve equal opportunity in the private sector can be subdivided into: (1) enforcement of the law and presidential order on job equality; (2) promotional and technical assistance activities to assist employers in complying voluntarily with these requirements; and (3) the provision of job placement, training, and special counseling and assistance services to disadvantaged members of minority groups. This three-pronged strategy, however, is not administered as a single system. The various programs and activities of the Federal Government under the heading equal employment opportunity are dispersed widely throughout the government, both horizontally (at the national level) and vertically (at the Federal, State, and local levels).

POLICY IMPLEMENTATION

The point was made at the beginning of this report that the battleground for achievement by the Federal Government in the field of civil rights has shifted. Civil rights laws now apply in almost every area in which the Federal Government has responsibilities. It is not so much new laws that are required today as a strengthened capacity to make existing laws work. Thus, this study examines the process by which the major policies of the Federal Government to achieve equality of opportunity in private employment are implemented. Chapter 6 begins with a summary of the ways in which the implementation of the Federal Government's equal job policies can be strengthened and improved, assuming, of course, that those responsible at the national level have a strong commitment to these policies and favor their full and vigorous implementation.

Seven major types of actions by which policy implementation in the field of equal employment opportunity can be strengthened and improved are discussed below. They are: Presidential Commitment, Enforcement, Interpretation, Strategy, Procedures, Resources, and Reorganization. 1/ These seven categories are closely interrelated. Many of the recommendations in this report come under or involve more than one category. This analytical framework is used because of its usefulness in summarizing measures which could be taken to increase the effectiveness of the equal job programs and activities of the Federal Government and because of its broader implications for the study of policy implementation as a political process.

This chapter treats in greatest detail and under a major new heading opportunities for increasing the effectiveness of the Federal Government's equal employment programs through inter-agency reorganization.

This subject has been held for last because, now that the major programs have been reviewed, it is appropriate in this concluding chapter to examine the way in which they relate to one another. The other options available for strengthening policy implementation in the equal employment field, which are referred to in the summary that follows, have already been discussed in the conclusions of the program chapters.

Presidential Commitment

Among the areas in which strong presidential commitment could be expected to increase the effectiveness of the government's equal job policies, the area which stands out is contract compliance. The contract compliance program has enormous potential, but this potential can be realized under present conditions only if there is communicated throughout government a sense of presidential priority. Even then, President Kennedy's experience with contract compliance indicates that other steps would have to be taken concurrently. In 1961 President Kennedy issued his first contract compliance order (Executive Order 10925) with much fanfare as part of a new effort relying on strong executive action to achieve progress in the field of civil rights. On issuing the order, Kennedy said, "I have no doubt that the vigorous enforcement of the order will mean the end of such discrimination [by the government or its contractors]." 2/ Despite the President's apparent personal interest, the contract compliance program continued to operate on basically a voluntary basis, with quite limited resources, and with few examples of direct and dramatic results. Whatever the reasons for this, the qualification must be put forward here that the President's ability to redirect the Federal bureaucracy, with the present machinery of the Executive Office, is often limited.

The government's training programs for the disadvantaged have fared better lately as far as presidential commitment is concerned, the most recent illustration being the establishment of the new JOBS (Job Opportunities in the Business Sector) program. President Johnson sent a special manpower message to the Congress on the JOBS program and established the National Alliance of Businessmen under Henry Ford II to administer the program for industry. 3/ In other manpower policy areas, notably with reference to the state employment services, efforts to provide special aids for the disadvantaged have been slow to take hold. It is clear that more presidential muscle, as well as other steps, would be required to redirect the entrenched bureaucracies of U. S. Employment Service and many state employment service agencies.

In respect to the enforcement of Title VII, it was precisely this element of presidential commitment which was said to be missing in the early days as evidenced by delays in the appointment of members to the newly created Equal Employment Opportunity Commission (EEOC). More recently, President Johnson's request for a doubling of appropriations for the EEOC and his appointment of a presidential aide to head the agency have upgraded its prestige and perhaps also its ability to produce.

Enforcement

A second means of strengthening policy implementation, closely related to the first, involves stronger enforcement, here defined to mean the more forceful application of sanctions and penalties. Again, the contract compliance program offers the clearest example, although an essentially negative one from the point of increasing results under the equal employment opportunity programs of the Federal Government. Chapter 4 of this report on the contract compliance programs concludes with the following statement:

> The principal problems are not the kind which can be corrected by new procedures, agency reorganization, or clearer guidelines to compliance agencies. The key is political. Our conclusion is that more determined application of sanctions under Executive Order 11246 is imperative if this program is to be effective and respected as such. 4/

To date, no major contract held by a major employer has been cancelled as provided under Executive Order 11246, although there have been recent signs of progress. Penalties have been applied or threatened on an ad hoc basis by several contracting agencies. The use of sanctions, however, must be made more systematic and thus more predictable if the contract compliance program is to succeed in achieving its stated objectives.

The same problem, weak enforcement, applies to several of the manpower programs discussed in Chapter 5. Apprenticeship training programs have not been de-registered on civil rights grounds as threatened in the middle of 1967, although admittedly this is a limited sanction. Likewise, the U. S. Employment Service (USES) has not on a systematic basis withheld or reduced budget items for state employment services as a means of enforcing civil rights regulations in a program area in which resistance to change --any change--is very strong.

The EEOC, on the other hand, offers an interesting case of what might be called the vigorous enforcement of non-sanctions. The Commission has weak enforcement powers, i.e., "informal methods of conference, conciliation, and persuasion" and referral to the Attorney General. Yet, it has tended to find reasonable cause on a liberal basis, that is, moving ahead on all cases in which there is ground for the supposition that a violation of Title VII may have occurred.

On the whole, experience with enforcement in the equal job field underlines an obvious point. Where resistance to governmental action is strong, government is likely to hold back on enforcement. It may be willing to exhort, but not to apply sanctions. A number of areas are discussed in this report where a choice is presented between the voluntary and enforcement approaches for the attainment of equal job objectives. Quite consistently, the government has opted for the voluntary approach.

Interpretation

Interpretation of basic policy statements by the responsible program administrators is an instrument which can be used to strengthen policy implementation. An illustration is the January 1965 ruling by the Department of Justice that banks serving as Federal Depositories are subject to the requirements of Executive Order 11246. A similar effort--albeit unsuccessful--to extend the coverage of Executive Order 11246 by administrative interpretation was the attempt to broaden the contract compliance program in 1967 by interpreting the order to apply to all employment by state and local governments under federal grants-in-aid.

On substantive matters, this report at several points details an unwillingness to come to grips with politically sensitive issues in the interpretation of major policies. This tendency towards vagueness on substantive issues was found to be especially characteristic of policy interpretation under Executive Order 11246 and in relation to the selection processes for apprenticeship and job training programs. The reason for this is no doubt the desire to avoid the dangerous shoals--both legal and political--of preferences for the members of minority groups. By being general and highly flexible on such matters as requirements for affirmative action by government contractors, government officials may feel they can achieve greater results than otherwise would be the case. They can in this way avoid the heated controversies that they believe (and probably correctly so) would develop if they were more precise about equal employment opportunity requirements. Although it may be true in some circumstances that a discreet vagueness in the interpretation of controversial policies can make it easier to put them into effect, this idea has quite clearly been carried too far under the government's major programs for achieving equality of opportunity in private employment.

Strategy

The development of strategy can also be a means of strengthening policy implementation for government administrators through their decisions on program priorities and on the allocation of resources and personnel accordingly. In the case of the contract compliance program, the recent new emphasis on pre-award reviews is an illustration of a new strategy which has proven effective. It concentrates resources on opportunities to affect contractor operations at a time when the government's leverage is likely to be greatest. Likewise, Chapter 2 of this report recommends a sharper focus on patterns of job discrimination as a means of increasing the effectiveness of the EEOC.

In the manpower field, considerations of strategy come into play in deciding budget priorities. Chapter 5 suggests that on-the-job training, to the extent it can be carried out, is the most desirable approach from the point of view of disadvantaged members of minority groups in the labor market. President Johnson's new JOBS program is therefore in line with the findings of this study about manpower program strategies to aid this group.

Procedures

Decisions on the procedures through which a given policy is translated into operational terms can also have an impact on policy implementation. Although, for these decisions to have an important and lasting effect on major policies, they ordinarily must be tied to other decisions interpreting policy in such a way as to permit or facilitate the adoption of new and stronger administrative processes. This relationship is illustrated by the main proposal for strengthening the contract compliance program advanced in Chapter 4. It is recommended that the OFCC adopt new enforcement procedures under which targets or objectives for the employment of minorities by government contractors would be used on a systematic basis. Contractors who fail either of two tests, (1) to meet their objectives for the employment of minorities or (2) to implement specific affirmative action measures detailed in a post-review agreement, would automatically be subject to hearings under Executive Order 11246. In effect, these new procedures would mean that government contractors could waive their obligation under Executive Order 11246 to prove that they have taken affirmative action if they can prove instead that they have gotten results, the acid test of the contract compliance program.

Similarly, Chapter 2 recommends that the EEOC interpret Title VII to permit the inauguration of new procedures tying together the Commissioner charge with the EEOC's data gathering programs. This would entail sending out questionnaires on personnel procedures to all groups for whom data are received where minority group representation is regarded to be low in relation to population. On the basis of both the EEOC's minority group employment data and the answers provided to the questionnaire, a decision would then be made as to whether to file a Commissioner charge triggering an investigation of possible violations of Title VII.

The EEOC presents another interesting procedural issue, that involving the sharp distinction between its investigation and conciliation processes. This division of labor was found to cut down on the availability of manpower and resources for priority tasks. But it also has certain benefits. Present EEOC procedures often create uncertainties on the part of the respondent which may cause him to react more decisively to Title VII complaints than might otherwise be the case. The conclusion in this report is that on routine cases the EEOC should loosen up on its present sharp distinction between the investigation and conciliation processes and allow its regional directors to work out, or have their investigators work out, solutions on the scene acceptable to all parties involved.

Another illustration of a procedural change which is closely related to policy interpretation and which would be likely to enhance the achievement of equal employment objectives was discussed for the government's job training programs. Under MDTA, the Labor Department at one time set planning targets for the representation of nonwhites. Although this planning system was not in effect long enough, or given sufficient stress, to have had a major impact, the idea that such a procedure should be used to encourage the fulfillment of equal opportunity goals is endorsed in this report.

Resources

The budget process provides strong leverage by which the President, Congress, and policy officials can strengthen or impede programs and activities of the Federal Government. Because of the controversial nature of the equal job programs and the relatively low visibility of many budget processes, there have been a number of instances in which the opponents of equal job programs have been able to undercut their effectiveness through the budget process. The 1968 reduction of 50 percent by the Congress in the President's request for increased funds for the EEOC is a case in point. The contract compliance program has at various times been under major attack by strategically placed members of Congress in a position to hold up appropriations on a program-wide basis.

Although resources is treated here as a separate instrument through which program effectiveness can be increased, almost all of the proposals advanced in this report could not be put into effect unless some additional resources were made available or transferred out of related programs. The one option for strengthening policy implementation among those covered that ordinarily does not entail increased spending is reorganization. This is not to imply that all of the options discussed above can only be used at a certain cost. For example, changed procedures adopted to increase efficiency may, in fact, reduce program costs. However, reorganization is the only one of the seven options which as a general rule does not involve increased expenditures.

Reorganization

Reorganization can make equal job programs more prominent and can increase their productivity by enabling them to relate to each other more systematically. But its potential has clear limitations, and in some instances too much reorganization can be a liability. This was found to be true of the programs of the individual contracting agencies to implement Executive Order 11246. A number of the compliance programs of contracting agencies have been victims of reorganizational roulette, the result being administrative turmoil for the program and often a serious decline in morale. Reorganization options for strengthening the government's equal job program must be examined at two levels, intra- and inter-agency.

Intra-Agency Reorganization. Within Cabinet level or independent agencies, questions involving the location of equal job responsibilities were found to be of greatest importance for agencies which have as their primary responsibility functions other than civil rights. The internal organization of the EEOC, for example, is not as important as is the location of equal job responsibilities within agencies where this function may have to compete for attention and resources with other policy objectives. This point is illustrated best under the contract compliance program. Procurement officers are part of large administrative systems in which the essential measure of success is the capability to produce needed items on time, in sufficient quantity, and according to the "specs." Either consciously or unconsciously, procurement officers may regard Executive Order 11246 as embodying quite separate and hard-to-handle government policy objectives. In this context, location of the compliance function within the contracting agency can be of critical importance.

Ideally, the **Federal** contractor should discuss his plans for performance under the equal opportunity clause with the appropriate government officials at the time his contract is negotiated. Assuming that the

Federal Government does not increase the number of full-time or more than half-time compliance specialists so that they can cover all government contracts on an individual basis, this means that other contract administrative personnel in many instances will have to continue to represent both the contracting agency's material purpose and the Nation's broader moral purpose, equal employment. This requires that full-time compliance personnel organize their activities in order to achieve what in Chapter 4 was referred to as the multiplier effect with other agency personnel.

Many arrangements have been tried to achieve a multiplier effect for contract compliance on a basis which takes into account possible problems of conflicting agency goals. The research for this study found such wide variations in the structure and operations of agency procurement systems that it was not possible to set forth a single locational solution for the compliance function. The principal criteria for decision must be locating authority for contract compliance so that leverage can be applied directly in conjunction with the awarding of contracts, and so that at the same time goal conflict issues between contract officers and compliance personnel can be dealt with at levels of the contracting agency with a broad view of national purposes.

For the manpower programs, the same potential of conflicting goals exists. The problem is less serious here, however, because newer components of the Labor Department responsible for providing manpower services for the disadvantaged are so strongly committed to equal opportunity that goal conflict situations as a practical matter are unlikely to occur. But there are also enforcement functions for equal opportunity within the jurisdiction of the Labor Department for which locational considerations are highly important. The present arrangement whereby a separate office, the office of equal opportunity in manpower programs, enforces civil rights regulations for the employment service system was found to be effective in terms of administrative structure. On the other hand, the arrangement for the apprenticeship programs where the BAT enforces its own equal opportunity regulations is not satisfactory. It is recommended in Chapter 5 that this responsibility also be assigned to the independent compliance unit within the Labor Department under the assistant secretary for manpower.

INTER-AGENCY REORGANIZATION OF THE EQUAL JOB PROGRAMS

A principal reason for designing this study to be broadly inclusive was to test the premise put forward initially that there should be stronger linkages among the major programs of the Federal Government in the field of equal employment opportunity. This concept of program linkages raises two questions. First, is it being done today? And second, if it is not, should it be? For purposes of presentation, a distinction is drawn as regards current program linkages between equal job enforcement and manpower programs and those between the EEOC and the contract compliance agencies.

Existing Program Linkages Between Equal Job Enforcement and Manpower Programs

At present, relationships between the manpower programs and the administrative machinery for both Title VII and Executive Order 11246 are limited. This conclusion applies most clearly to contract compliance. OFCC officials have made a conscious decision not to interlock Executive Order 11246 with the manpower programs on a systematic basis. They maintain that all contract compliance specialists should, depending on the circumstances, make appropriate use of a given community's employment service and training resources, but that this link should not be formalized. Doing so, it is contended, would put some employers in a position where they would have an excuse for not employing minorities if manpower program officials were uncooperative or simply did not provide the kinds of job preparation and counseling services needed in a given situation.

A number of additional points can be made against routinizing inter-connections between the contract compliance and manpower programs. For one, requirements to tie manpower programs into affirmative action agreements with contractors would add materially to the time needed to perform contract compliance reviews. While there is no reason that the number of compliance personnel should be fixed, this limitation can be used as an argument against systematic linkages between contract compliance and government manpower programs until such time as more staff is provided. Another possible argument against such linkages relates to the structure of the Federal Government's manpower programs. Manpower programs vary significantly from city to city. The vocational schools or the community action agency in one city may be much stronger and more effective in reaching disadvantaged members of minority groups than the employment service or the MDTA programs. The personnel director for a major Federal contractor in the area is often in a position to know in detail the capabilities of these programs and "where the bodies are buried." A contract compliance specialist, particularly one based in another city, is unlikely to be able to keep up with recent developments and know as much about these programs as does the employer.

To the extent that lack of staff and manpower program proliferation have influenced the decision not to link the two programs, OFCC officials cannot be held responsible. They do not have the authority to make the necessary changes to overcome these limitations. However, the question that must be raised here is not whether the right decision was made under the conditions which then applied. Rather, the appropriate question is whether the Nation's larger policy objectives embodied in Executive Order 11246 would at the present time be advanced if a decision were made to establish systematic linkages between the contract compliance and manpower programs of the Federal Government.

Based on the analysis in Chapters 4 and 5, this report favors the establishment of systematic relationships between the contract compliance and manpower programs. A major problem under the contract compliance program has been its vagueness in defining what employers are required to do under Executive Order 11246. The manpower programs offer a basis for introducing much greater precision into agreements between the government and contractors on affirmative action measures. Such linkages could be used effectively as a means for implementing the recommendation in this report to strengthen enforcement of the order by insisting upon satisfactory performance by contractors on commitments to undertake highly specific affirmative action steps encompassed in post-review statements. The new JOBS program and "MA-4" contracts under which private employers are encouraged to hire and help the disadvantaged, lend themselves especially well to this purpose. In fact, before these programs were established, the potential for effective linkages between the contract compliance and manpower programs was much more limited than at present. It can even be argued that this difference justifies the earlier decision against program linkages and points to the need to reverse this decision now under changed conditions.

Employers may reject manpower program assistance from the Federal Government, preferring instead to establish their own programs for the disadvantaged. But the point remains that the use of the government's manpower programs (especially "MA-4" contracts) as the "first offer" of an acceptable affirmative action by the government is likely to make discussions with employers on their obligations under Executive Order 11246 much more specific and productive.

Inter-program linkages similar to those suggested for contract compliance and the manpower programs of the Federal Government are also possible between the manpower programs and the EEOC. This is particularly true at the conciliation stage and in connection with the EEOC's technical assistance activities. Where reasonable cause is found, EEOC conciliators work out agreements with respondents involving the alleviation of the conditions which led up to the complaint and often also setting forth general measures which an employer agrees to take to deal with basic problems of minority group unemployment or underemployment. The latter steps can, and do on occasion, involve tie-ins with government manpower programs such as JOBS, CEP, and MDTA on-the-job training.

The EEOC has already moved further in formalizing such inter-program linkages than the OFCC and the various contract compliance agencies. Under a field order of November 2, 1967, EEOC regional offices receive an updated list of unplaced Job Corps trainees who live in the region. The purpose of this information is described as follows:

> These lists might prove particularly useful in compliance or affirmative action situations where candidates are needed for available jobs and/or training programs. 6/

Even more important, the EEOC in September 1967 inaugurated a program whereby the Labor Department on a trial basis is placing professional specialists under its MDTA on-the-job training program in four EEOC regional offices (Austin, Cleveland, Los Angeles, and New Orleans) to link this program with the activities of the Commission's field personnel. Although the field work for this study did not permit an appraisal of these new moves, they are clearly in the right direction.

To summarize, this discussion of relationships between the equal job enforcement and manpower programs indicates that the linkages between contract compliance and manpower programs are much too weak and are not likely to be strengthened under existing arrangements. Stronger linkages also need to be established between Title VII enforcement and the manpower programs, although there is a possibility that this objective can be achieved, at least in part, under existing arrangements. It now remains to consider relations between the two most closely related policy pronouncements in the field of equal employment opportunity, Title VII of the Civil Rights Act of 1964 and Executive Order 11246.

Program Linkages Between Title VII Enforcement and Contract Compliance

Both Title VII and Executive Order 11246 ban job discrimination by employers and unions. The order, of course, goes beyond nondiscrimination and also requires affirmative action on the part of government contractors. All government contractors with twenty-five or more employees are covered by both Title VII and the Executive order. Unlike the discussion above of relationships between the equal job enforcement and manpower programs of the Federal Government, there has been a much longer history of interagency relationships among the principal agencies involved in enforcing Title VII and Executive Order 11246.

A number of steps have been taken recently to establish closer working relationships between the EEOC, the OFCC, and the Justice Department. Officials of the three agencies now meet on a weekly basis to exchange information. In November 1967, a system was established for distributing EEOC decisions of reasonable cause against government contractors to the chief compliance person in each contracting agency. Instructions from the OFCC to contract compliance officers state:

> Upon receipt of these findings, you are requested to furnish this Office [the OFCC] recommendations you may have for the issuance of pre-award order and/or appropriate sanctions. The recommendations should be supported by compliance data and forwarded within ten (10) days. 7/

Another new inter-agency procedure initiated in 1968 provides the EEOC with information on all complaints received by the OFCC. Contract compliance specialists are authorized to suspend investigations of complaints already under investigation by the EEOC.

It is, as yet, too early to assess the impact of these procedures; however, a possible barrier to their successful application is that in the past relations between the EEOC and the agencies involved in contract compliance have been far from harmonious. The problem of agency overlaps under Title VII and Executive Order 11246 arose early in the history of the EEOC in the Newport News Shipbuilding case. This case, as do many employment discrimination cases against major government contractors, involved both Title VII and the Executive order. It was not resolved until the Secretary of Labor issued a debarment order prohibiting future government contracts with the Newport News company at a time when the company was bidding on a multimillion dollar submarine contract. The Secretary of Labor's order coincided almost exactly with the beginning of meetings with company officials in Washington presided over by the EEOC and attended by Defense Department officials representing the contracting agency. At this meeting, an agreement was worked out between the company and the government, settling the dispute and reinstating the company's status as eligible to receive government contracts.

Shortly after the meetings in Washington, Chairman Franklin D.

Roosevelt, Jr. of the EEOC, issued a statement on the case. In the opening paragraph, the Chairman stated, "The nation's largest shipbuilder today signed an agreement with the Equal Employment Opportunity Commission to provide broad new promotion opportunities for Negroes." 8/ The statement said that the agreement was signed after "six days of intensive negotiations at Commission headquarters in Washington." 9/ The statement then went on to say that representatives of the Defense and Navy Departments "joined with commission conciliators in shaping the agreement." 10/ This low billing for the contracting agencies disturbed compliance officials and increased the already existing coolness between the EEOC and the compliance agencies.

Fortunately for relationships between the two programs, EEOC officials apparently had second thoughts. A year later, when a further agreement was negotiated between the government and the Newport News Shipbuilding Company, the EEOC took pains to work out a statement satisfactory to the contracting agencies involved. In this case, the statement was issued by the EEOC, but the Secretary of Labor was listed ahead of the Chairman of the Commission. The new agreement was described as a "breakthrough" brought about by the action of their two agencies. 11/ The May 1967 statement may have reduced interagency tensions, but the basic conditions which arose with the enactment of Title VII and which produced this friction still exist.

The official Washington rationale for the separation of Title VII and the contract compliance program is that the two are "looking for different things." The EEOC is charged with the responsibility for processing individual complaints, whereas the OFCC and the compliance agencies seek to establish broader patterns of compliance and affirmative action. Is is further maintained by officials of both programs that there is, and should be, coordination when it appears that the two programs are "zeroing in on the same company," but that this can be done under present inter-agency procedures.

Problems caused by the separate status of these two equal job programs, however, go beyond big cases such as Newport News. Although the OFCC complaint rate 12/ is relatively small compared to that of the EEOC, many of these complaints involve double filing with the EEOC and the OFCC. Some even involve triple filing, where complaints to the OFCC are also filed with the EEOC and the relevant State or local FEPC's. Civil rights leaders active in assisting job discrimination complainants often urge multiple filing. It is regarded as a good means of pressuring employers and in some cases even causing a helpful spirit of competition among Federal, State, and local officials to see whose agency can produce the best and fastest results.

Overlaps have also occurred after the Attorney General has entered cases referred to him by the EEOC because the Commission has been unable to conciliate. Situations have arisen in which FBI agencies investigating cases for the Civil Rights Division of the Justice Department have found that the OFCC or a contract compliance agency was still attempting to resolve a complaint referred to the Attorney General from the EEOC.

The government's poster on equal employment opportunity which must be displayed by employers would appear to encourage, or at least condone, multiple filing. Printed across the top, it says, "Discrimination is Prohibited." Below are two columns. One describes the requirements of Executive Order 11246 and the other those of Title VII. At the bottom of both columns, the poster directs "any person who believes that he or she has been discriminated against" to contact the addresses in Washington respectively of the EEOC and the OFCC. Some complainants probably read this to mean that they are supposed to contact both agencies. This impression is likely to be strengthened by the fact that in many situations an employee or potential employee does not know whether the company in question is at the time working on a government contract. The complainant's reaction in this situation is likely to be to leave it up to the government to decide which authority applies.

Besides complaint handling, another area of EEOC-contract compliance overlap involves technical assistance. Both programs have staff members who advise and assist employers on affirmative actions to increase the numbers and job status of minority group employees. As yet, the EEOC's efforts in this area have been limited, but the Commission plans to increase its technical assistance activities and give them a higher priority in the future. When this occurs, there are sure to be situations in which the EEOC and contract compliance personnel in the field will find themselves duplicating efforts and in some cases perhaps even working at cross purposes.

Other overlaps involve substantive issues. In some instances, the EEOC and the OFCC have given major attention to the same issues of policy interpretation as to what constitutes job discrimination. This is reflected, for instance, in the 1967 decision by the OFCC to issue its own standards on the kinds of employment tests that are permissible, despite the fact that in April 1966 the EEOC published its "Guidelines on Employment Testing Procedures" which have been widely distributed and used. OFCC officials maintain that their guidelines are "totally consistent" with those of the EEOC. The basic rationale for the two sets of guidelines is that contracting agencies can be more specific in determining what kinds of testing practices are prohibited, whereas the EEOC's guidelines are of necessity more general. Nevertheless, employers with government contracts (and they are legion) are certain to add this illustration to the many which are cited of the government's uncoordinated civil rights requirements.

The same kind of situation exists for seniority. Both the OFCC and the EEOC have developed policies for resolving job discrimination complaints growing out of formerly separate seniority lines. Problems of overlap in this area are most likely for industries and regions of the country which the OFCC has selected for special emphasis. 13/ For example, the OFCC in 1967 gave major attention to securing compliance on the part of the southern paper industry. The biggest equal employment issue for this industry is seniority. In effect, what is happening is that, as the OFCC focuses on industries where serious enforcement problems are believed to exist, it often ends up concentrating its energies on exactly the same substantive issues, in this particular case seniority, as the EEOC.

Although there are a number of areas of EEOC-contract compliance overlap, there have been bright spots too. Success was achieved, for example, in consolidating the data-gathering responsibilities of the EEOC, the OFCC, and Plans for Progress. Under an arrangement worked out by the Bureau of the Budget in the fall of 1965, the EEOC was assigned the task of collecting data for all three agencies, using standard forms developed for employers, unions, and the sponsors of apprenticeship programs. The EEOC has also played a leadership role in bringing the relevant Federal agencies together in connection with its industry hearings. After its January 1967 textile industry hearings in Charlotte, North Carolina and its white collar hearings in New York City, the Commission called upon selected agencies to help it develop and put into effect government-wide follow-up programs.

These various steps, plus the new procedures for exchanging information between the EEOC and the OFCC, are all to the good. But the basic condition of overlap which required these moves are unlikely, based on past Washington experience, to be fully dealt with by the kinds of inter-agency formal or ad hoc coordinating devices now in use, or in common usage in the executive establishment of the Federal Government. The conclusion of this report is that the Title VII and Executive Order 11246 enforcement systems should no longer be separate. To the fullest extent possible, these responsibilities should be brought together under a single agency.

Summary on Program Interrelationships

To summarize on program interrelationships, efforts to interrelate EEOC and contract compliance activities and to tie-in both programs with Federal manpower programs are recent in origin and for the most part limited in scope. The weaknesses of these program linkages reduce program effectiveness because of the failure to achieve pay-offs which could be realized if these programs were more closely intermeshed at key points. Two major needs for the future emerge from this analysis of interrelationships among the equal employment opportunity programs and activities of the Federal Government:

> First, closer linkages should be established between the equal job enforcement and manpower programs of the Federal Government. The latter should be used as feeders on a much more specific basis than at present into corporate union affirmative action efforts.
>
> Second, to the fullest extent possible, the responsibilities for the administration of Title VII and the supervision and coordination of Federal contract compliance activities should be under the same agency.

Reorganization Alternatives

The reorganization of Federal agencies on a scale necessary to accomplish these two objectives would involve far more than considerations of improved administration and program efficiency. 14/ At stake as well are the extent to which prominence and emphasis are accorded to equal employment goals in relation to other and related programs of the Federal Government.

There are two basic alternatives to fulfill the needs identified in this report for the reorganization of the government's equal employment opportunity programs and activities. One is reorganization under an independent agency, which in this case involves the consolidation of equal employment functions under the EEOC. The second basic alternative is to combine most or all of the Federal Government's equal employment functions under a single Cabinet department, either pulling them together in an existing department or establishing a new department of civil rights which would have this and other civil rights responsibilities.

An Independent Agency

The Equal Employment Opportunity Commission could easily be reorganized to combine Title VII enforcement and contract compliance supervision under a single agency. Assuming that the present arrangement is continued whereby operating responsibility for the enforcement of Executive Order 11246 is retained by contracting agencies, all that would be needed would be to transfer the responsibility for supervising and coordinating contract compliance from the Department of Labor to the Commission.

The independent agency reorganization approach, however, would not be an effective means for fulfilling the first of the two "needs" identified above, tying in the government's manpower programs with its equal job enforcement activities. To fulfill this need, a special manpower programs unit would have to be established in the newly merged EEOC-OFCC. Its role would be to relate the manpower programs of the Federal Government to: (1) EEOC conciliation agreements; (2) affirmative actions agreed to under the contract compliance program; and (3) broad community or industry-wide promotional and technical assistance efforts undertaken by the EEOC. This would require the establishment of close working relationships in Washington and in the field with the relevant manpower agencies, namely, the Manpower Administration in the Department of Labor, the Office of Economic Opportunity, and the Department of Housing and Urban Development, which has jurisdiction over the Model Cities Program.

Under this independent agency reorganization approach, the government would be in a much stronger position than under the present interagency coordinating procedures to use potentially the most effective weapon in its arsenal. To give an example, where conciliation of a serious Title VII complaint against a firm with major Federal contracts breaks down, the reorganization described here would facilitate the government's proceeding against such an employer by withdrawing a Federal contract or cutting off future contracts, even though the original complaint was filed under Title VII.

This reorganization would not affect the compliance programs of individual contracting agencies. The relocated OFCC would become a major staff component of the EEOC, but would continue to have essentially the same supervisory and coordinating responsibilities which it has had to date.

The EEOC would be assigned the powers now held under Executive Order 11246 by the Secretary of labor.

If this independent agency approach were to be adopted, it is fully conceivable that it could be extended with the appropriate congressional action to include related civil rights functions. For example, the responsibility for administering the open housing title of the 1968 Civil Rights Act could be assigned to the Commission and so could the Attorney General's responsibility for supervising and coordinating the administration of Title VI of the Civil Rights Act of 1964. In this instance, the role and name of the EEOC would have to be broadened to include equal opportunity matters generally, as opposed to its present focus on equal employment alone.

Departmental Reorganization Alternatives

The three Cabinet level reorganizations considered in this chapter differ from one another in important ways and must be treated separately. They are to regroup the equal employment programs in the Labor Department, the Justice Department, or under a new department of civil rights.

The Labor Department. The Cabinet agency reorganization in the field of equal employment opportunity which has been most widely discussed is to bring all of the equal employment programs and activities of the **Federal Government** together under the Department of Labor. The original version of Title VII in the Senate took this approach. More recently, a Notre Dame University Conference on Civil Rights Legislation and Administration in February 1966, attended by civil rights experts and government officials, urged that equal employment functions be centralized in the

Labor Department. 15/ It recommended: (1) consolidating the administration of antidiscrimination and manpower programs in the Labor Department; (2) expanding the investigatory resources of the Federal Government for equal employment by having wage and hour and other Labor Department investigative personnel include equal employment policies as part of their duties; 16/ and (3) continuing the EEOC to act on requests for cease and desist orders from Labor Department officials and on appeals from their actions. 17/

The Notre Dame Conference emphasized linking antidiscrimination and manpower programs.

> The operational concept of a federal equal employment opportunity policy should be extended in a way that will tie training and manpower development programs to comprehensive antidiscrimination efforts. 18/

Compared with the independent agency solution, the Labor Department reorganization approach offers a closer link between the equal job enforcement and manpower programs, although it would be less successful as a means of bringing together Title VII enforcement and contract compliance. Problems of overlap between Title VII and Executive Order 11246 would be alleviated, but not wholly resolved, under this arrangement. The EEOC would undoubtedly have to continue in existence. Its role would come into play after the Labor Department had investigated a case, found reasonable cause, and then failed to work out a settlement. At this point, the Secretary of Labor under the Notre Dame plan would seek a cease and desist order from the EEOC. (As an alternative, this function could be handled by the federal courts.) Under the Notre Dame plan, the EEOC would also serve as an appeals board for persons dissatisfied with actions taken by the Secretary of Labor.

In addition to a reorganization which simply transferred the equal job programs into the Labor Department as presently organized, a variant of this approach would be to follow recent state and city practice of creating broad human resource development administrations which would combine welfare, health, manpower, and equal job enforcement responsibilities within the scope of the new agency. Issues raised by this possibility go beyond the scope of this inquiry. However, the proposal for centralizing the equal job functions in the Labor Department as presently constituted would in many respects be similar to an alternative that involved having equal job functions included under a new Cabinet agency for human resource development.

The Justice Department. A second Cabinet level approach for centralizing the equal employment opportunity programs and activities of the Federal Government is to have the Justice Department serve as the focal point of reorganization. This approach has not been spelled out anywhere in as much detail as the Notre Dame Conference proposals.

In the equal employment field, the Justice Department already has important responsibilities. The Attorney General is empowered to file suit under Title VII of the Civil Rights Act of 1964 and to participate by intervention or amicus curiae in private litigation under this title. He also has enforcement powers under Executive Order 11246. To fulfill the two reorganization needs stated above by further expanding the equal employment role of the Justice Department, it would be necessary to reduce the functions of the EEOC (perhaps as recommended above by the Notre Dame Conference) or eliminate it altogether and transfer its functions, plus those of the OFCC, to the Attorney General. Some appropriate steps would also have to be taken to tie in with the manpower programs of the Federal Government The most effective way to do this would be to create a special manpower programs unit in the Civil Rights Division of the Department of Justice in the same manner as indicated for the independent agency reorganization approach.

There are several precedents for giving the Justice Department the principal role in the equal job area. One is President Johnson's Executive order of September 24, 1965, assigning Title VI coordinating responsibility to the Attorney General. 19/ The President directed the Attorney General to "assist Federal Departments and agencies to coordinate their programs and activities and adopt consistent and uniform policies, practices, and procedures with respect to the enforcement of Title VI of the Civil Rights Act of 1964." 20/ The order states as the reason for assigning this function to the Attorney General that "the activities of the departments and agencies under the Title [Title VI] will be predominantly legal in character and in many cases will be related to judicial enforcement." 21/ A related precedent was the moving of the Community Relations Service from the Commerce Department to the Justice Department in April 1966. The Service, a new civil rights agency created under the Civil Rights Act of 1964, has as its goal "to help communities resolve racial difficulties by helping them eliminate disadvantages suffered by members of minority groups." 22/

A New Civil Rights Department. Still a third Cabinet level solution involves the creation of a completely new department. Rather than assign responsibility for equal job programs and activities to an existing department, a single civil rights department could be established having this and other responsibilities. Were the decision made to give higher priority to the now extensive civil rights functions of the Federal Government, this is a step which could be taken to upgrade and highlight these activities.

The jurisdiction of a new Cabinet level civil rights department could, along with other functions, include: equal employment opportunity; open occupancy in housing and public accommodations; community relations; Title VI coordination; and research and fact-finding on civil rights problems generally. Such a restructuring of civil rights functions could be accomplished by consolidating the Civil Rights Division of the Justice Department, the EEOC, the OFCC, the Community Relations Service, and perhaps also the U. S. Commission on Civil Rights. It would also be necessary to establish a special manpower programs unit in whatever sub-part of the new department is assigned jurisdiction over equal employment opportunity.

Criteria for Choice

The choice among these four alternatives requires an assessment of each in relation to the purposes to be achieved by the reorganization of the equal employment opportunity programs and activities of the Federal Government. In effect, the criteria for choice are the attributes of an optimal approach for combining Title VII and Executive Order 11246 administration on a basis which closely links these enforcement activities with the manpower service programs of the Federal Government. Seven such criteria are discussed below.

1. The Federal agency principally responsible for equal employment programs and activities should have a strong civil rights orientation.

The selection of presidential appointees to head agencies of government is influenced, among other factors, by the point of view and objectives of the interest groups most affected. Among the four options for reorganizing the equal job programs of the Federal Government presented above, the one which raises the most serious questions of constituency is the consolidation of equal employment activities in the Department of Labor. Ordinarily, the Labor Department is regarded by a President as the spokesman for organized labor in the Cabinet, although in recent years the Department has also become a spokesman for the interests of the disadvantaged in the labor force.

Because of the resistance to the equal employment programs and activities of the Federal Government on the part of some labor unions, there is a basis for concern that the Labor Department reorganization approach would not satisfy the criteria of a strong civil rights orientation. This is not to imply that Labor Department officials themselves lack sympathy with the principal civil rights objectives of the Federal Government or to deny that progress has been made recently by the Department in strengthening its commitment in this field. The point is that the ties of some Labor Department activities to unions with a less than enthusiastic civil rights posture suggests that the Labor Department reorganization approach may be less desirable in terms of this first criterion than the other three alternatives as a means of increasing the effectiveness of the equal employment opportunity programs and activities of the Federal Government.

This conclusion is supported by the skepticism which exists on the part of civil rights proponents about the strength of the civil rights commitment of the Labor Department. When President Johnson's proposed merger of the Labor and Commerce Departments was pending in 1967, there were reports that the EEOC would be made a part of the combined new department. Rising to the battle, the NAACP attacked this idea claiming it "would seriously impair the ability to obtain redress of employment discrimination grievances." 23/ Such concerns about the strength of the Labor Department's dedication to civil rights are not unique to national civil rights leaders. A number of civil rights leaders at the local level interviewed in the field research indicated opposition to the Labor Department approach for reorganizing equal employment opportunity programs.

Essentially the same point can be made about the Bureau of Employment Security and the U. S. Employment Service. 24/ Both are components of the Labor Department. These agencies, in carrying out the Federal role with respect to the State employment service system and the unemployment compensation program, have developed a decided employer orientation. Thus, a plan assigning all equal job functions to the Labor Department could produce conflicts between an employer orientation in these two program areas and the needed strong civil rights commitment on the part of the leadership of the agency within the Federal Government chiefly responsible for assuring equality of opportunity in private employment.

2. The agency with the central responsibility for equal job programs should have control over the resources necessary to fulfill the objectives of the Federal Government in this field.

Washington experience with various forms of coordinating arrangements--formal, informal, and ad hoc--testifies to the importance of an agency having control over the resources necessary to accomplish its major purpose or purposes. Recently, programs to aid the urban poor have come up against serious problems of service delivery because of the overlapping and sometimes conflicting responsibilities of four major Federal agencies--HEW, HUD, Labor, and the Office of Economic Opportunity. These problems are similar, but on a larger scale, to those which can occur in the equal job field because the resources needed to implement policy goals are dispersed throughout the bureaucracy.

Contrary to the first criterion, it is the Labor Department reorganization approach which comes out strongest in terms of control over resources. With equal job functions centralized in the Department of Labor, the only needed resources outside of the Labor Department's Washington jurisdiction would be the authority to issue cease and desist orders under Title VII, to institute court action under both Title VII and Executive Order 11246, and to conduct contract complience reviews. Up to the point where intransigence develops in response to serious violations, the Secretary of Labor under the Notre Dame Conference plan or a similar plan would, at least on paper, be in a position to utilize the resources necessary to relate manpower programs to both of the major equal job enforcement programs of the Federal Government. Under all three of the other reorganization approaches, the central agency for equal employment opportunity would be able to administer jointly Title VII and Executive Order 11246, but would lack control over manpower program resources.

An important qualification must be entered here as regards the Labor Department's actual ability to control the manpower program resources under its jurisdiction. It was pointed out in Chapter 5 that the diversity and splintered administrative structure of existing manpower and training programs seriously impairs the ability of officials at either the Federal or the State-local levels to relate these programs to one another on a comprehensive basis and to monitor their effectiveness. Thus, while the Labor Department does have an advantage in terms of criterion two, this advantage is not as decisive as it appears on the surface.

3. The equal employment opportunity programs and activities of the Federal Government should be organized to take maximum advantage of opportunities for action where broad patterns of discriminatory practice, or potentially discriminatory practices, are involved.

This program broadening criterion, which focuses on policy considerations, is closely related to the second criterion on control over resources. And again it is the Labor Department which comes out strongest, although here too the splintering of responsibility for manpower and training programs is an important drawback. The basic purpose of the Labor Department reorganization is to broaden the government's role in the promotion of equality of opportunity in private employment. Such a reorganization would seek to concentrate the government's efforts on situations in which changes in recruitment, training, and related personnel practices could significantly increase the employment and job prospects of members of minority groups.

Both the Department of Justice and the EEOC, on the other hand, tend to have a narrower orientation which can be characterized as complaint centered or reactive. Respondents from civil rights organizations for this study were critical of both agencies on these grounds. The Justice Department has taken an essentially legalistic approach in carrying out its responsibilities under Title VII and Executive Order 11246 for quite obvious reasons, namely because its actions are enforceable in the Federal courts. By contrast, the EEOC in recent months has moved to broaden its impact through such techniques as public hearings, technical assistance, conferences for major industries, and follow-ups on these activities. The critical question is whether the EEOC can continue in this direction and break out of the complaint orientation typical of most State and local fair employment practice agencies. If it cannot, one can argue that the alternatives that are most likely to achieve this purpose are the Labor Department reorganization approach and possibly also the creation of a new civil rights department.

4. The official chiefly responsible for administering equal employment opportunity programs should have a favorable position within the executive branch

For most administrative functions, location within an organization close to the person or persons with final authority is considered an advantage because such proximity often makes it easier to obtain needed powers, staff, funds, and program support. According to this executive branch locational criterion, the most desirable of the four alternatives would be a single function Cabinet department of civil rights. Assigning equal employment functions to the Attorney General or the Secretary of Labor would be next in order of preference because of their supposedly better access to the President, the White House staff, and the Bureau of the Budget.

An important qualification must be entered for this criterion. It assumes that the task to be done is one to which the organization as a whole is committed. If the task to be done has limited clientele support or is opposed by powerful groups within the organization itself, then it may be an advantage for it to have a basically independent status, as is the case of the EEOC, or to be submerged in the bureaucratic structure as is true generally for agency enforcement of Executive Order 11246.

5. The central agency for the Federal Government in the equal job field should be in a position to maximize opportunities for productive working relationships with State and local governmental agencies having parallel functions.

On this intergovernmental criterion, the advantage lies with the independent agency approach. The almost universal pattern of State-local activities in the equal employment field is commissions which in their structure and procedures are very similar to the EEOC. In States which have fair employment practices commissions with mandatory enforcement powers, the Federal Government under Title VII is obligated to defer job discrimination complaints for time periods specified by law. Relationships between the EEOC and State and local fair employment commissions are discussed in Chapter 2. The chapter concludes that these relations are not uniformly satisfactory and recommends a selective deferral system whereby States with limited programs and staff resources would not automatically receive jurisdiction over all job discrimination complaints filed under Title VII. If such a policy were adopted, it would, if anything, increase the advantage of the independent agency reorganization approach. The Federal counterpart to the State commissions would have to be in close and continuing contact with the States to administer this selective deferral process.

Among the three other three alternatives, the civil rights department is strongest on this criterion. A significant number of State and local commissions with enforcement powers for nondiscrimination in employment also have other civil rights functions, most frequently open housing and public accommodations. Thus, the scope of these State and local agencies parallels that which could be expected for a national civil rights department.

The Labor Department option is the hardest to assess on these grounds. Since its State-local ties tend to be with State employment security and manpower agencies, as opposed to fair employment practice agencies, the case can be made that the Labor Department is not in a good position to work with and lead State and local governments in the equal job area. On the other hand, it can also be argued that this lack of intergovernmental ties is not a disadvantage at all and that, in fact, the Labor Department approach could have beneficial results in terms of using Federal leverage and program concepts as a means for broadening State and local equal employment opportunity programs and activities.

6. Equal employment programs should have as high as possible a level of visibility for the relevant public, in this case, members of minority groups and civil rights organizations.

To an important extent, the attainment of equality of opportunity in private employment depends upon the filing of complaints of job discrimination. Putting equal employment programs under an agency which has as its principal function the performance of tasks other than achieving equal employment opportunity, runs the risk that this would lower the level of public awareness of how the complaint process operates.

The clientele of nondiscrimination in employment programs are generally persons who are disadvantaged in terms of educational background and job experience and to whom the bureaucracy of the Federal Government is little known and often a source of apprehension. Were equal employment functions transferred to the Labor or Justice Departments, persons in this group might probably find it more difficult to know where to go in their community to file complaints, as compared to an arrangement under which a civil rights agency, such as the EEOC or a department of civil rights, had the central responsibility for enforcement of nondiscrimination in employment.

High visibility of the equal job function with the executive branch also has advantages in Washington for purposes of coordinating activities in this area with other and related programs of the Federal Government. On this basis, a new department of civil rights is probably to be preferred, with the merger of the EEOC and the OFCC, the Justice Department, and Labor Department reorganization approaches following in this order.

7. The decision on location of central responsibility for equal job programs and activities must be such that its psychological or public opinion impact is as favorable as possible.

The public opinion impact of a reorganization of the Federal Government's equal job functions is particularly important as it affects the Labor Department. Having the Labor Department the focal point for equal job functions, as already noted, would be likely to arouse criticism on the part of civil rights proponents and might be interpreted in the press as a backing down on civil rights, despite the strong arguments sure to be advanced that it is intended to broaden and thereby strengthen the government's activities in this area. Centralization in the Justice Department could have the opposite effect. It could be interpreted as a clamping down, a decision to move with greater forcefulness in applying legal penalties for violations of nondiscrimination in employment laws and policies.

Creation of a civil rights department would also be treated in the public domain as a move to give greater priority and prominence to civil rights. It could, however, have a negative effect if it were opposed by civil rights proponents as separate treatment of minorities by the government in such a way as to call undue attention to differences among racial, national origin, and religious groups. This is a possibility which would have to be explored in advance with spokesmen for the principal minority groups. Finally, the independent agency approach could be expected to cause hardly a ripple in the press. It would probably be interpreted as a strengthening of the government's commitment to equal employment opportunity, but this would depend in large part on how the announcement of the reorganization was made.

Recommendation on Inter-Agency Reorganization

Each of the various possible reorganization alternatives must be assessed in relation to these criteria in selecting an approach for reorganizing the equal employment opportunity programs and activities of the Federal Government.

Among the four, the Justice Department is given the lowest ranking for purposes of this report. The Department has a relatively narrow orientation on equal job matters and lacks the experience and expertise necessary to link effectively equal job enforcement and manpower service programs. It also lacks working relationships with state and local fair employment practice agencies and, for this and other reasons, would not be highly visible to complainants and potential complainants as the umbrella agency within the Federal Government for equal employment opportunity.

As between the other three alternatives, the decision is considerably harder and thus much more depends on the emphasis and objectives of the national administration in office. This is especially true of the proposal for a new department of civil rights. The considerations which would have to be taken into account in reaching this decision go beyond the criteria above as to the location within the Federal bureaucracy of central responsibility for equal employment opportunity programs and activities. First, the basic strategy decision would have to be made as to whether to expend the necessary political capital to win acceptance for a reorganization plan sure to be controversial. Second, the question must be raised as to how a new civil rights department would relate to other Cabinet agencies. One possible danger is that creation of a new civil rights department, because it could divert attention from civil rights matters in other agencies, would result in a reduction in the commitment to aiding minorities under existing Federal programs for the disadvantaged. Also to be taken into account is the question of whether enforcement functions should be carried out by a Cabinet Secretary, as opposed to their being implemented by the Attorney General or an independent agency of the Federal Government. On the plus side, a new civil rights department would mean a spokesman in the Cabinet for what today is regarded by many Americans as the most serious challenge to our governmental system.

With these and other factors taken into account, _if_ the decision was made to establish a new department of civil rights, then clearly it should be the umbrella agency for equal employment opportunity. Even if the remaining two options were found to rank higher on the criteria suggested above than a department of civil rights, once the decision is made to establish such a department, it would defeat its purpose to locate central responsibility for equal employment policies in a different agency of the federal government.

The choice which remains, therefore, is to select between the independent agency and the Labor Department reorganization approaches, on the assumption that there will _not_ be established a new department of civil rights. Both have strong pluses. Clearly, if the Labor Department could achieve a multiplier effect in the enforcement of antidiscrimination in employment policies through the use of wage and hour examiners, this would constitute a strong argument for its selection. At the same time, rather serious problems are presented by the lukewarm civil rights orientation of some programs under the Department and the lack of visibility of equal job enforcement functions if they are assigned to Labor. The independent agency approach in contrast is more neutral, lacking pluses potentially as strong or problems potentially as serious as the Labor Department reorganization approach. The EEOC is fully committed to civil rights, more visible to complainants and within Federal Government because it is a separate agency, and has established working ties with State and local fair employment practice agencies. Its chief drawback is the lack of control over the manpower program resources, although it must be noted again that the case based on an analysis of its areas of national responsibility within the executive branch.

This report favors the independent agency approach for centralizing equal employment programs and activities of the Federal Government. Barriers to the entry of minority group workers into many job areas are increasingly a function of labor union policies and activities. This is to be expected. The drive for equal opportunity has obvious displacement effects. Blue collar workers, who tend to be unionized, often bear the brunt of the burden of government efforts to upgrade the opportunities of members of minority groups. The Labor Department has a long tradition of ties to the labor movement. It is difficult to envision its being sufficiently strongly committed to the enforcement of the major equal job policies of the Federal Government. A single function agency for equal employment is likely to do a better job. The preferred inter-agency reorganization approach for purposes of this report is therefore the transfer of the OFCC to the EEOC with an explicit commitment, backed by the necessary staff and resources, to linkages between the activities of these newly combined agencies and the manpower service programs of the Federal Government.

A FINAL WORD

The 1964 Civil Rights Act and the Presidential order on contract compliance are part of the old marching orders of the movement toward civil rights progress in America. Since 1964, the scene has shifted. More militant and often violent forms of protest and unrest are stage center. Blackness, rather than equality, is the predominant theme. In part, this change in mood and emphasis may be a product of disenchantment with the ability to produce results under the older breakthroughs in the race against racism. Today, experience has accumulated and techniques have been developed to the point where policy leaders are in a position to improve substantially the implementation of the policies of the Federal Government for reducing inequalities in the labor market. It is an opportunity that should not be missed.

FOOTNOTES TO CHAPTER 6

1/ There are also points where this report suggests that the achievement of equal employment goals could be enhanced by congressional or Presidential action to adopt new policies or make major amendments in existing law. For example, recommendations for congressional action are contained in Chapter 2 on the Equal Employment Opportunity Commission (EEOC) to give stronger enforcement powers to the EEOC and to permit the Commission to extend its jurisdiction in states with weak or ineffective state fair employment practices agencies.

2/ "Statement by the President upon Signing Order Establishing the President's Committee on Equal Employment Opportunity," Public Papers of the President, U. S. Government Printing Office, Washington, D. C., 1962, p. 150.

3/ In conjunction with the JOBS program, the Manpower Administration has inaugurated a new program (now called "MA-4") under which contracts can be entered into with private employers to finance training and related special services for the disadvantaged. See Chapter 5 of this report.

4/ See page 143.

5/ For discussion of this option, see the section which follows on reorganization.

6/ "Coordination with Job Corps," Field Order No. X-1, Equal Employment Opportunity Commission, Nov. 2, 1967, p. 1.

7/ Memorandum from Edward C. Sylvester, Jr., Director, Office of Federal Contract Compliance, Nov. 17, 1967, p. 1.

8/ Press release of Franklin D. Roosevelt, Jr., Chairman, Equal Employment Opportunity Commission, April 4, 1966, p. 1.

9/ Ibid.

10/ Ibid.

11/ Press release of Equal Employment Opportunity Commission, May 1, 1967.

12/ The OFCC's annual complaint rate is 375-400.

13/ These areas are described in the budget for the OFCC as "significant cases having OFCC involvement which affect development of policies and precedent." There were 20 such cases in 1967. The Budget of the United States Government, Fiscal 1969, Appendix, p. 711.

14/ See Herbert A. Simon, "Recent Advances in Organization Theory," Research Frontiers in Politics and Government. (The Brookings Institution, 1955), pp. 25-26. Writing in 1955, Simon concluded as follows about the history of reorganization proposals. "The result, then, of the congressional debates over specific reorganizational proposals has been to restore considerations of political power and of policy as major and fundamental elements in the theory of administrative organization. I think that this has become increasingly clear over the past two decades in spite of its explicit denial by the first Hoover Commission, on the basis of the recommendations it has thus far made public, that the fiction of treating reorganization questions solely as questions of efficiency has now been completely abandoned, and that the commission is avowedly concerned with substantive issues of Federal policy and programs."

15/ Participants were: Dean Joseph O'Meara of the Notre Dame Law School; Paul Anthony, Southern Regional Council; Arnold Aronson, Leadership Conference on Civil Rights; Carl Auerbach, University of Minnesota Law School; Berl Bernhard, Attorney, Washington, D.C.; Wiley Branton, United States Department of Justice (observer); Thomas Broden, Jr., Notre Dame Law School; Leslie Dunbar, the Field Foundation; Vernon Eagle, The New World Foundation; John Field, United States Conference of Mayors; Harold Fleming, The Potomac Institute; G. W. Foster, Jr., University of Wisconsin Law School; Eli Ginzberg, Conservation of Human Resources, Columbia University; Robert Harris, University of Michigan Law School; Vivian Henderson, Clark College, Atlanta, Georgia; Frank Horne, New York City Housing and Redevelopment Board; William Lewers, C.S.C., Notre Dame Law School; Melvin Mister, United States Conference of Mayors; George Nesbitt, Low Income Housing Demonstrations, Department of Housing and Urban Development (observer); John de J. Pemberton, American Civil Liberties Union; Daniel Pollitt, University of North Carolina Law School; John Silard, Attorney, Washington, D.C.; William Taylor, United States Commission on Civil Rights (observer).
The conferees participated as individuals, not as representatives of their organization.

16/ The use of wage and hour examiners, whose job it is to enforce the Fair Labor Standards (minimum wage) Act, has also been recommended in a bill introduced by Senators Jacob K. Javits (N.Y.), Clifford P. Case (N.J.), and Thomas H. Kuchel (Calif.). There were over 1,000 wage and hour examiners at the end of fiscal year 1967. The Bureau of Labor Standards handled 23,000 complaints and made 58,000 investigations. See S. 1667, Congressional Record (May 3, 1967), pp. 6226-30.

17/ "Notre Dame Conference on Federal Civil Rights Legislation and Administration: A Report, "Notre Dame Lawyer, Vol. XLI, No. 6 (1966), pp. 15-16.

18/ *Ibid*.

19/ Executive Order 11247, September 24, 1965.

20/ *Ibid*.

21/ *Ibid*.

22/ Department of Justice, Annual Report, The Community Relations Service for Fiscal Year (1967).

23/ New York Times, Feb. 23, 1967, p. 12.

24/ Secretary of Labor Willard W. Wirtz announced another reorganization of his Department October 21, 1968 which would abolish both the Bureau of Employment Security and the Bureau of Work-Training Programs and transfer their functions to the Manpower Administration. Presumably, the major officials responsible for the programs of these bureaus would stay on, so the problem alluded to here of a lack of strong civil rights orientation, to the extent that it exists, could continue.

Appendix A

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Sec. 701. Definitions

For the purposes of this title -

(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: Provided, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers: Provided further, That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex or national origin and the President shall utilize his existing authority to effectuate this policy.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivisions of a State, except that such terms shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 716, (B) seventy-five or more during the second year after such date or fifty or more during the third year, or (C) twenty-five or more thereafter, and such labor organization--

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "state" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Land Act.

Sec. 702. Exemption

This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution.

Sec. 703. Discrimination Because of Race, Color, Religion, Sex, or National Origin

(a) It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which

would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization--

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning , in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrsse "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if--

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Nothwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938 as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area , or in the available work force in any community, State, section, or other area.

Sec. 704. Other Unlawful Employment Practices

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

Sec. 705. Equal Employment Opportunity Commission

(a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the

Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) The Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2201-2209), is further amended--

(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

"(32) Chairman, Equal Employment Opportunity Commission"; and

(2) by adding to clause (45) of section 106(a) thereof (5 U.S.C. 2205 (a)) the following: "Equal Employment Opportunity Commission (4)."

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power--

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate

the purposes and policies of this title and to make the results of such studies available to the public;

(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to advise, consult, and assist the Attorney General on such matters.

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

(i) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(j) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section.

Sec. 706. Prevention of Unlawful Employment Practices

(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced, under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(c) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State, which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(d) A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or the efforts of the Commission to obtain voluntary compliance.

(f) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United Stated Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704(a).

(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (e), the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under subsection (e) and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

Sec. 707

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit(or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

Sec. 708. Effect on State Laws

Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

Sec. 709. Investigations, Inspections, Records, State Agencies

(a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements and under which no person may bring a civil action under section 706 in any cases or class of cases so specified, or under which the Commisssion shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

(c) Except as provided in subsection (d), every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

(d) The provision of subsection (c) shall not apply to any employer, employment agency, labor organization, or joint labor-management committee with respect to matters occurring in any State or political subdivision thereof which has a fair employment practice law during any period in which such employer, employment agency, labor organization, or joint labor-management committee is subject to such law, except that the Commission may require such notations on records which such employer, employment agency, labor organization, or joint labor-management committee keeps or is required to keep as are necessary because of differences in coverage or methods of enforcement between the State or local law and the provisions of this title. Where an employer is required by Executive Order 10925, issued March 6, 1961, or by any other Executive order prescribing fair employment practices for Government contractors and subcontractors or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

Sec. 710. Investigatory Powers

(a) For the purpose of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

(b) If the respondent named in a charge filed under section 706 fails or refuses to comply with a demand of the Commission for permission to examine or to copy evidence in conformity, with the provisions of section 709(a), or if any person required to comply with the provisions of section 709(c) or (d) fails or refuses to do so, or if any person fails or refuses to comply with a demand by the Commission to give testimony under oath, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709(c) or (d) or to comply with the demand of the Commission, but the attendance of a witness may not be required outside the State where he is found, resides, or transacts business and the production of evidence may not be required outside the State where such evidence is kept.

(c) Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence or for permission to examine or to copy evidence in conformity with the provisions of section 709(a), such person may file in the district court of the United States for the judicial district in which he resides, is found, or transacts business, and serve upon the Commission a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court.

Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon failure of such demand to comply with the provisions of this title or with the limitations generally applicable to compulsory process or upon any constitutional or other legal right or privilege of such person. No objection which is not raised by such a petition may be urged in the defense to a proceeding initiated by the Commission under subsection (b) for enforcement of such a demand unless such proceeding is commenced by the Commission prior to the expiration of the twenty-day period, or unless the court determines that the defendant could not reasonably have been aware of the availability of such ground of objection.

(d) In any proceeding brought by the Commission under subsection (b), except as provided in subsection (c) of this section, the defendant may petition the court for an order modifying or setting aside the demand of the Commission.

Sec. 711. Notices to be Posted

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

Sec. 712. Veterans' Preference

Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

Sec. 713. Rules and Regulations

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account (1) of the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be involid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

Sec. 714. Forcibly Resisting the Commission or its Representatives

The provisions of section 111, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

Sec. 715. Special Study by the Secretary of Labor

The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1965, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.

Sec. 716. Effective Date

(a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

APPENDIX B

EXECUTIVE ORDER 11246

EQUAL EMPLOYMENT OPPORTUNITY

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I - Nondiscrimination in Government Employment

SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102. The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103. The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II - Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscriminaction clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for department of any contractor from further Government contracts under Section 209 (a) (6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D - Sanctions and Penalties

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, or organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Acts of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the nondiscrimination provisions

of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a) (2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a) (5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SEC. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209 (a) (6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

Subpart E - Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers of labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III - Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 203 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The Term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

PART IV - Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE

September 24, 1965

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